(20,616.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 256.

COUNTY OF PRESIDIO, TEXAS, PETITIONER,

vs.

THE NOEL-YOUNG BOND & STOCK COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 1560.

PRESIDIO COUNTY, Plaintiff in Error,
versus
THE NOEL-YOUNG BOND & STOCK CO., Defendant in Error.

Error to the Circuit Court of the United States for the Northern District of Texas.

[Original Record Filed May 2, 1906.]

U. S. Circuit Court of Appeals. Filed Aug. 22, 1906.
CHARLES H. LEDNUM, *Clerk.*

1 *Caption.*

Be it remembered, That there was open and begun to be holden a regular term of the United States Circuit Court of the Fifth Circuit Northern District of Texas at Abilene on the 2nd day of October A. D. 1905, it being the 1st Monday in said month and the day fixed by law for commencing a regular term of said Court at said place. Present The Honorable Edward R. Meek, United States District Judge, William H. Atwell, United States District Attorney; Geo. H. Green, United States Marshal for said District; J. H. Finks, Clerk of said Court, when and where the following proceedings, among others were had to-wit:

No. 355.

THE NOEL-YOUNG BOND AND STOCK COMPANY
versus
PRESIDIO COUNTY, TEXAS.

Plaintiff's Original Petition.

Filed 26 day of July, 1904. D. H. Hart, Clerk.

In the U. S. Circuit Court, W. D. T., at El Paso, Texas.

No. 388.

THE NOEL-YOUNG BOND AND STOCK CO.
versus
THE COUNTY OF PRESIDIO, IN THE STATE OF TEXAS.

To the honorable U. S. circuit court, W. D. T., El Paso, Texas:

The Noel-Young Bond and Stock Company, Plaintiff complaining of the County of Presidio, in the State of Texas Defendant, respectfully states:

That Plaintiff is a corporation duly incorporated and organized under the laws of the State of Missouri and is not a resident of the State of Texas: and the defendant is a municipal corporation constituting one of the counties of the state of Texas and organized under the laws of said State, and that W. W. Bogel, who is a resident of the said County of Presidio, is the County Judge of said
2 county and said county is located in the Western District of Texas.

Plaintiff states that on the 6th. day of December, 1886, said County of Presidio executed and delivered its certain negotiable or written obligations and bonds numbered 90, 91, 92, 94, 95, and 96, each and every one of said bonds and obligations being issued, as is represented and recited in the same, for the erection of a courthouse and jail, said recital in each of said bonds is as follows:

"This bond is issued by virtue of an act of the Legislature of the State of Texas, entitled: 'An Act to authorize the County Commissioners' Court of the several counties of the state, to issue bonds for the erection of a court house, and to levy a tax to pay for same; approved February 11th, 1881, and by virtue of the provision of Chapter 17, laws of called session of the 18th. Legislature, which said chapters has since been validated by the Act of March 27th 1885, authorizing the County Commissioners' Court of the several counties of the state, to issue bonds for the erection of a county jail, and by order of the County Commissioners' Court of said County of Presidio, on the 9th. day of February, A. D. 1886, and is redeemable before maturity at the pleasure of the county."

Plaintiff states that each of said bonds is endorsed and was endorsed at the time of its issuance, with the following printed endorsement "Bond No.....$1000.00 Presidio County Court-house and Jail Bond."

Plaintiff states that each and every one of said bonds was alike and of the same tenor and effect, (excepting the numbers thereof) and they all bear interest at the rate of eight per cent. per annum, payable annually on the 10th day of April, at the state treasury, on surrender of the proper coupons attached thereto, and all of said bonds were duly signed and executed by the proper officers and agents of said County of Presidio and were duly registered by the treasurer of said county under the direction and orders of the Commissioners' Court of said county.

That by each of said bonds the said County of Presidio acknowledged itself indebted to, and promised to pay to the bearer thereof the sum of One Thousand Dollars fifteen years after the date thereof, to-wit: 15 years after December 6th, 1886, with interest at the rate of 8 per cent. per annum payable as aforesaid on the presentation and surrender of the proper coupons thereto attached, and that said bonds and coupons were duly issued by virtue of the authority recited in them and by authority of law.

That to each of said bonds above mentioned there were
3 attached fifteen coupons of and for the sum of $80.00 each, for the annual interest of 8% provided for in the same

whereby the County of Presidio promised in each of said coupons to pay to the bearer thereof the sum of $80.00.

That one of said coupons on each of said bonds has become due on the 10th. day of April of each and every year since their issuance, up to and including the year 1900, and each and all of said coupons were and are payable to the bearer of same and were and are signed by the proper officers of said county and were and are attested as required by law: that the plaintiff, The Noel-Young Bond and Stock Company is the bearer and holder of each and all of said bonds Nos. 90, 91, 92, 94, 95, and 96, and of the interest coupons which were attached thereto, as aforesaid.

That all of the interest coupons which were attached to said bonds up to and including the year 1895, have been paid, and that the six coupons for $80.00 each payable on April 10th. 1896, belonging to and issued in connection with said six bonds, and the six coupons for $80.00 each payable on April 10th. 1897, and the six coupons for $80.00 each payable on April 10th. 1898, and the six coupons for $80.00 each payable on April 10th. 1899, and the six coupons for $80.00 each payable on April 10th. 1900, belonging to and issued in connection with said bonds, are all past due and remain unpaid, and that the principal due on said thirty coupons amounts in the aggregate to the sum of $2400.00.

Plaintiff states that all of said six bonds matured and became due and payable on the 6th day of December, 1901, and there being no coupons on them representing the interest accruing after April 10th 1900, there is due upon the same interest at 8% per annum from April 10th, 1900.

Plaintiff says that payment of said six bonds for $1000.00 each aggregating $6000.00, with interest on the same at the rate of 8% per annum from April 10th 1900, and the payment of all of said thirty coupons and interest hereinbefore described has been duly demanded and all of said bonds and coupons have been duly presented to the Commissioners' Court of Presidio County, Texas, for payment and allowance, and all the same have been by the Commissioners' Court of Presidio County heretofore wholly refused and disallowed and the payment of the same has been refused, and said court has refused to recognize said bonds and coupons in any way as just and valid claims against said county; and by the order of said Commissioners' Court, said county has repudiated any and all liability on said bonds and coupons.

That the principal due on said six coupons for the sum
4 of $80.00 each, which fell due April 10th, 1896, is $480.00 and the principal due on said six coupons for the sum of $80.00 each, which fell due on April 10th, 1897, is $480.00 and the principal due on said six coupons for the sum of $80.00 each which fell due on April 10th, 1898, is $480.00 and the principal due on said six coupons for the sum of $80.00 each, which fell due on April 10th, 1899, is $480.00; and the principal due on said six coupons for the sum of $80.00 each which fell due on April 10th, 1900 is $480.00; and the principal due on the said six bonds as aforesaid is $6,000.00.

Plaintiff states that said defendant the County of Presidio, has never paid plaintiff, the legal holder, owner and bearer of said bonds and coupons, any amount whatever due thereon: and plaintiff is damaged in the sum of $10,000.

Plaintiff prays that the defendant, the County of Presidio, Texas, be duly cited, as the law provides, and it prays judgment against said County of Presidio for the amount of the bonds sued on, to-wit: $6,000.00 with interest on the same at eight per cent. per annum from April 10th, 1900, and for the whole amount of said coupons, with interest on the coupons, hereinbefore described respectively, at the rate of six per cent. per annum from the time they matured respectively; and it prays judgment for costs and asks for general relief.

PATTERSON & BUCKLER,
Attorneys for the Plaintiff.

Indorsed as follows: No. 335. In U. S. Circuit Court W. D. T. The Noel-Young Bond and Stock Co., *versus* County of Presidio, Texas. Plaintiff's Original Petition filed this 26 day of July, 1904 D. H. Hart, Clerk; by J. P. Hodgson, Deputy. Filed at Abiline Oct. 15 1904, J. H. Finks, Clerk; by F. W. Girand, Deputy.

Defendant's Original Answer.

United States Circuit Court, W. D. T., at El Paso, Texas.

NOEL-YOUNG BOND & STOCK COMPANY
vs.
COUNTY OF PRESIDIO, STATE OF TEXAS.

And for plea and answer to plaintiff's action, defendant comes by its attorney and says, that heretofore, to-wit, at the spring
5 term, A. D. 1893, of the District Court, in and for the County of Presidio and State of Texas in a certain suit therein pending, wherein Ball, Hutchings & Company was the plaintiff and the said Presidio County was the defendant, the plaintiff in said suit sought to recover judgment for the sum of one thousand four hundred and forty dollars ($1440.00) and interest thereon, alleged to be due on certain coupons attached to coupon bonds numbered ninety to ninety six inclusive, issued on the 6th day of December, 1886, by Presidio County for one thousand dollars each ($1000.00) payable to bearer fifteen years after date, with interest at the rate of eight per cent. (8%) per annum, which interest was evidenced by fifteen coupons attached to each of said bonds of eighty dollars ($80.00) each, numbered consecutively from one to fifteen, of which coupons plaintiffs alleged that they were holders and bearers and became so for value before maturity, without notice of any irregularity or infirmity affecting the validity of either bonds or coupons. That among other defenses plead by this defendant in said suit it was alleged that if said bonds were issued and delivered for an unlawful purpose and in violation of the law to-wit, for the purpose of fur-

nishing the courthouse at Marfa, as per specifications of a certain contract made with Britton & Long, for the sum of seven thousand dollars ($7000.00), as appears from the proceedings of the Commissioners' Court of Presidio County dated December 4, 1886, that the order and proceedings of said Commissioners' Court in issuing and delivery said bonds for the aforesaid purpose were fraudulent, illegal and void, and that the contractors to whom said coupons and bonds were issued, and subsequent holders thereof, had notice of the purposes above stated for which said bonds were issued. In the said plea it was alleged that Presidio County, the defendant herein issued certain bonds numbered one to sixty inclusive, for the purpose of building a court house, with interest coupons attached, which were delivered to J. H. Britton, contractor; that bonds and coupons for building jail, numbered from sixty-one to eighty-six inclusive, were delivered to D. C. Anderson, contractor, that bonds for the construction of water works numbered from eighty seven to eighty-nine inclusive with interest coupons attached, were issued to J. H. Britton and that bonds numbered ninety to ninety six inclusive, the subject matter of said suit, were issued on the sixth day of December, 1886, and delivered to Britton & Long, contractors, for the purpose of purchasing furniture for the court house at Marfa, and that if
6 said County Commissioners' Court of Presidio County had any authority in law to issue bonds for building the court house and jail at Marfa, such power had been exhausted by issuing the bonds of one to eighty six inclusive, and the interest coupons attached thereto, and that the subsequent issuance and delivery of the bonds for furnishing the court house was without authority of law, fraudulent and void, and that the proceedings of the Commissioners' Court in relation thereto, affected with notice all parties purchasing and dealing in said bonds and interest coupons, and especially the plaintiffs in said suit. That upon issue joined upon said pleadings of Plaintiffs and defendants as aforesaid, the District Court of Presidio County before which said case was tried without a jury, made the following findings of fact in substance, to-wit "that on the ninth day of February, 1886, the defendant entered into a contract with J. H. Britton for the construction of a court house in the town of Marfa in Presidio County, Texas, agreeing to pay him therefor the sum of sixty thousand dollars ($60,000.00) in coupons bonds of said county, bearing interest at the rate of eight per cent. (8%) per annum, and that on the same day and in the same order of the Commissioners' Court of said county, to-wit, February 9th, 1886, said county entered into contract with D. C. Anderson to construct a county jail for said county at said Marfa, Texas, and agreed to pay him therefor the sum of twenty six thousand dollars ($26,000.00) in the coupons bonds of said county, bearing interest at the rate of eight per cent. (8%) per annum, payable in fifteen years from date. The said bonds were by the said order of the County Commissioners' Court to be for the sum of one thousand dollars ($1,000.00) each and amount to eighty six thousand dollars ($86,000.00) and that said bonds only numbered from one to eighty six inclusive, and that the bonds from one to sixty were issued to

J. H. Britton, and the bonds from sixty one to eighty six were issued and delivered to D. C. Anderson; that on the fourth day of December, 1886, the defendant, Presidio County, entered into a contract with Britton & Long to furnish the said Court house, constructed by said Britton for the said county, and agreed to pay them therefor, the sum of seven thousand dollars ($7,000.00), that on the tenth day of November, 1886, the said defendant entered into a contract with Britton & Long to build a system of waterworks for said court house and jail for the sum of three thousand dollars ($3,000.00),
7 payable in the bonds of said county with interest at the rate of eight per cent. (8%) per annum, and to be dated December 1, 1886, and that for payment of said contract for furnishing the court house and jail and supplying them with a system of water works, the said county issued ten more bonds of one thousand dollars each ($1,000.00), which were issued and delivered to J. H. Britton and that said bonds were numbered from eighty-seven to ninety-six inclusive, and that the bonds and coupons in suit in this cause were the bonds issued for the purpose of furnishing said court house and jail and supplying them with a system of water works, and not for the purpose of building a court house and jail, and that the bonds which the plaintiffs had sued on in this case were fraudulently ordered by the Commissioners' Court on date February ninth, 1886, in which it is shown that the said county had contracted to pay only eighty-six thousand dollars ($86,000.00) in bonds for said courthouse and jail; that plaintiffs in this suit are holders of the coupons in this case for value before the maturity thereof and that coupons in suit prior to the institution of this were duly presented to the County Commissioners' Court of Presidio County for payment and that payment by said county was refused; that the owners of said bonds and coupons purchased same for their par value," and defendant further says that — the trial of said cause the court found the following conclusion of law, to-wit, "I conclude, that inasmuch as the bonds on their face recite and refer to the order of the Commissioners' Court of February 9th, 1886, the purchasers of the bonds in question were bound to know that the said county had contracted to pay eighty-six thousand dollars ($86,000.00) in bonds for the erection of said courthouse and jail that the bonds and coupons issued, over and above eighty-six thousand dollars ($86,000.00) were issued for unlawful purposes, and the purchasers being chargeable with notice of that fact, the same are void in their hands, and that defendant ought to have judgment." And the defendant avers that upon said findings of facts and conclusions of law as aforesaid, the Court entered judgment against the plaintiff and in favor of the defendant and for all costs of suit, and that said judgment was thereafter on writ of error in all things affirmed by the Supreme Court of the State of Texas; and defendant avers that the aforementioned suit was upon interest coupons attached to bonds numbered from ninety to ninety-six inclusive and are the same Identical bonds sued on in this case, as by the record and proceedings thereof will more fully appear,
8 which said judgment still remains in full force and effect, is in no wise reversed satisfied or made void and this the said

defendant is ready to verify by said record, therefore the defendant pleads said judgment in bar of this suit and prays judgment, that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant.

J. A. GILLETT AND
BEALL & KEMP,
Attorneys for Defendant.

Now comes defendant by its attorneys in the above entitled suit and says that if for any cause its plea of former judgement in bar ought not be sustained, then and in that event, defendant comes and denies all and singular the allegations of said plaintiff's petition, and of this puts itself upon the county [country].

J. A. GILLETT AND
BEALL AND KEMP,
Att'ys for Defendant.

And for further plea in its behalf defendant says that plaintiff ought not to have and recover herein, because the bonds and interest coupons sued upon in this case, numbered 90, 91, 92, 94, 95, and 96 if issued as alleged by the County Commissioners' Court of Presidio County, Texas, were so issued and delivered to Britton & Long, contractors, for furnishing the courthouse at Marfa without authority of law and said bonds and interest coupons and each and every of them, sued upon and described in plaintiffs' petition are fraudulent, illegal and void, and this the defendant is ready to verify, wherefore it prays judgement that the said plaintiff ought not to have and maintain his aforesaid action.

J. A. GILLETT,
BEALL & KEMP,
Attorneys for Defendant.

And now comes defendant by its attorneys, and say that suit was not brought upon the interest coupons described in said plaintiff's petition within four years next after the cause of action accrued and same are barred by the statute of limitation wherefore the said plaintiff ought not to recover thereon & of this pray judgment.

J. A. GILLETT,
BEALL & KEMP,
Att'ys for Def't.

9 (Indorsed as follows:) In U. S. Circuit Court W. D. T. at El Paso No. 335. The Noel-Young Bond & Stock Co *vs.* The County of Presidio Texas. Defendant's original answer Filed this 5th day of Octo. 1904, D. H. Hart, clerk, By J. P. Hodgson, Deputy. Beal & Kemp, Att'ys for Def't. No. 335 Filed at Abeline, Octo. 15th-04. J. H. Finks, Clerk By F. W. Girand, Deputy.

Defendant's First Amended Original Answer.

In the Circuit Court of the United States for the Northern District of Texas, at Abeline.

THE NOEL-YOUNG BOND AND STOCK COMPANY
vs.
THE COUNTY OF PRESIDIO, STATE OF TEXAS.

And now comes the defendant, Presidio County by its attorneys in the above styled and numbered cause, and by leave of the Court first had and obtained, amends its answer heretofore filed, and in lieu thereof, files the following pleas to the plaintiff's petition.

(1.) And for plea and answer to plaintiff's action defendant comes by its attorneys and says, that plaintiff ought not to have and recover herein for that, heretofore, to-wit; on the 28th day of March, 1893, in a certain suit therein pending in the District Court in and for Presidio County, Texas, wherein Ball, Hutchings & Company were the plaintiffs and the said Presidio County, and the counties of Brewster, Jeff Davis, Bushel and Foley, in the State of Texas, were the defendants, in which suit the plaintiffs sought to recover judgment for the sum of $1,440.00, being the interest due on certain interest bearing coupon bonds attached to bonds number 90, 91, 92, 93, 94, 95, and 96 inclusive, the said bonds purporting to have been issued on the 6th day of December, 1886, by Presidio County, for one thousand dollars each, payable to bearer fifteen years after date with interest at the rate of 8 per cent. per annum, which interest was evidenced by fifteen coupons attached to each of said bonds of $80.00 each, which numbered consecutively from 1 to 15, of which coupons plaintiffs alleged thay were the holders and bearers, and became so for value before maturity, without notice of any irregularity or infirmity affecting the validity of either of said bonds or coupons.

That among other defenses plead by this defendant in said suit, it was alleged that if said bonds were issued and delivered to plaintiffs of [or] their assignors, they were so issued and delivered for an unlawful purpose, to-wit: for the purpose of furnishing the court-house of Marfa as per specifications of a certain contract made with Britton and Long for the sum of seven thousand dollars, as appears from the proceedings of the Commissioners' Court of Presidio County dated December 4th 1886, that the order and proceedings of said Commissioners' Court in issuing and delivering said bonds for the aforesaid purpose were fraudulent and illegal and void and that the contractors to whom said coupons and bonds were issued, and the subsequent holders thereof had notice of the purposes above stated, for which said bonds were issued, and in said plea, it was further alleged that Presidio County the defendant herein, issued certain bonds numbered one to sixty inclusive for the purpose of building a court house with interest coupons attached, which were delivered to J. W. Britton, a contractor, that bonds and coupons for building a

jail, numbered 61 to 86 inclusive, were delivered to D. C. Anderson, a contractor, that bonds for the construction of water works, numbered from eighty-seven to eighty-nine inclusive, with interest coupons attached, were issued to J. H. Britton, and that coupons attached to said bonds numbered ninety to ninety-six inclusive, the subject matter of said suit, were issued on the 6th day of December, 1886, and delivered to Britton and Long contractors for the purpose of purchasing furniture for the court house at Marfa, and that if said County Commissioners' Court had any authority in law to issue bonds for the building of the court house and jail at Marfa, such power had been exhausted by issuing the bonds numbered one to eighty-six inclusive, and the interest coupons attached thereto and that the subsequent issuance and delivery of the bonds for furnishing the court house was without authority of law, fraudulent and void, and that the proceedings of the Commissioners' Court in relation thereto affected with notice, all persons purchasing and dealing in said bonds and interest coupons, and especially the plaintiff in said suit, and defendant says that upon issue joined upon said pleadings the plaintiffs and defendants as aforesaid, the District Court of Presidio County, the Honorable C. N. Buckler presiding,
before whom said case was tried without a jury, jury being
11 waived, entered in substance the following judgment:

BALL, HUTCHINGS & COMPANY
vs.
PRESIDIO COUNTY ET AL.

Now on this, the 28th day of March, 1893, this cause came on for trial, and all the parties to the action announced ready for trial, and a jury being waived, and after hearing the evidence and argument of counsel, was of the opinion that the law and the facts were with the defendants, and so found, wherefore, the Court doth order and adjudged that the plaintiffs herein, Ball, Hutchings & Company, recover nothing against the defendants, Presidio County, Jeff Davis County Brewster County, Buchel County and Foley County, and that the said defendants, and each of them, go hence without day and recover their costs of the plaintiff herein, and the plaintiff, Ball. Hutchings & Company, pay all the costs incurred in this action, and that execution issue therefor, and to the judgment of the Court as heretofore set out. The plaintiff by *their* counsel, in open court excepted, and gave notice of appeal.

And defendants say that the coupons and bonds referred to in the plaintiff's petition in this case are the same bonds to which the coupons were attached that were sued upon in the aforesaid case, in which judgment was rendered against the plaintiff, Ball, Hutchings & Company, except bond and coupons attached thereto, numbered ninety-three, which are not involved in this suit; and defendant further says that the judgment rendered against plaintiff in said suit of Ball, Hutchings & Company, *vs.* the defendants aforesaid, in the District Court of Presidio County, Texas, was thereafter in all things affirmed by the Supreme Court of the State of Texas, on,

to-wit: the 4th day of March A. D. 1895. The defendant says that the aforementioned suit was upon interest coupons attached to bonds numbered ninety to ninety-six inclusive, and are the same identical bonds sued on in this case, except bond number ninety-three, as aforesaid, as by the record and pruceedings thereof will more fully appear, which said judgment of the District Court of Presidio County, being affirmed by the Supreme Court of the State of Texas, still remains in full forec and effect, and is in no wise reversed or made void, and this the said defendant is ready to verify by such record, wherefore the defendant pleads said judg-
12 ment in bar of this suit, and prays judgment against the said plaintiff thereon and for all costs of suit.

BEALL & KEMP,
J. A. GILLETT,
Attorneys for Defendants.

(2.) And for further plea in this behalf defendant says that plaintiff ought not to have and recover herein upon the said series of bonds and coupons attached, sued upon in this case, being numbered ninety, ninety-one, ninety-two, ninety-four, ninety-five and ninety-six, because the same were issued and delivered to Britton & Long, contractors, for the fraudulent and illegal purpose of furnishing the court house at Marfa, which had already been constructed, and because said bonds and coupons attached thereto were issued without any lawful authority, in this; that the power of the county to erect a court house and jail at Marfa having bene exhausted, as appears from the order of the Commissioners' Court of Presidio County on February 9th 1886, recited in face of said bonds and the contract therein mentioned. The purchasers of the bonds in suit were put upon inquiry and affected with notice of the fraudulent and illegal character of said bonds. That is to say: that on the 9th day of February, 1886, the Commissioners' Court of Presidio County, Texas, entered an order embodying the following: (1.) The bid of Britton to construct a court house at Marfa, Presidio County, Texas, for sixty thousand dollars, to be paid in court house and jail bonds, and that of Anderson to construct a jail at the same place for twenty-six thousand dollars, to be paid in the same kind of bonds, which were accepted; (2.) Britton and Anderson were respectively required within ten days from February 9th, 1886, the date of said order, to enter into contracts to construct same; (3.) Work to begin in twenty days from date of contract, and the court house to be furnished within one year, and the jail to be finished within six months from date of contracts; (4.) the bonds were to be of the denomination of one thousand dollars each, to bear interest at eight per cent., to run fifteen years from their dates, and the sixty thousand dollars to be delivered to Britton wear [were] to bear same date as his contract to build court house, thirty thousand dollars of them to be delivered to him when the contract was signed, and thirty thousand when the court house was half finished and the twenty-six thousand dollars to be delivered to Anderson were to bear

the same date as his contract to build the jail thirteen thou-
13 sand dollars of them to be delivered to him when the contract was signed and thirteen thousand dollars when the jail was half finished; (5.) And the County Judge was authorized on behalf of the county, to enter into said contracts with Britton and Anderson, and to issue, and to deliver to them respectively, said bonds as above provided; that sixty of said bonds numbering one to sixty inclusive, were dated February 11th, 1886, and delivered to Britton, and that twenty-six of said bonds, numbering from sixty-one to eighty-six inclusive, were dated February 15, 1886, and delivered to Anderson, said 86 bonds being for one thousand dollars each, were of the bonds authorized to be issued by said order of February 9th 1886, of the Commissioners' Court of Presidio County, and each bond was in the same words and figures, with the exceptions of numbers and dates that on the 6th day of December, 1886, the Commissioners' Court of Presidio County, for the purpose of paying for the furnishing of said court house and erecting a system of water works for said court house and jail then already constructed delivered to Britton and Long ten bonds numbered eighty-seven to ninety-six inclusive, each in the following language except as to number, omitting coupons.

"THE STATE OF TEXAS, *County of Presidio:*

"No. 96, $1,000.00.

"The County of Presidio, in the State of Texas, will pay the bearer $1,000, fifteen years after date, with interest at the rate of eight per centum, payable annually on the 10th day of April, at the state treasury, on surrender of proper coupon hereto attached, This bond is issued by virtue of an act of the Legislature of the State of Texas, entitled 'An act to authorized the County Commissioners' Court of the several Counties of the state to issue bonds for the erection of a court house, and to levy a tax to pay for the same, approved February 11, 1881, and by virtue of the provisions of chapter 17, laws of called session of the Eighteenth Legislature, which said chapter has since been validated by the act of March 27, 1885, authorizing the County Commissioners' Court of the several counties of the state to issue bonds for the erection of a county jail, and by order of the county Commissioners' Court of said County of Presidio, on the 9th day of February, 1886, and is redeemable before maturity at the pleasure of the county.

"In testimony whereof, the County Commissioners' Court of Presidio County has caused to be hereto affixed the seal and
14 signature of the proper officers of said Court this the 6th day of December, 1886.

"J. S. CATLIN,
"County Judge of Presidio County.

"Countersigned,
"W. S. LAMPERT,
"Clerk of the County Court of Presidio County, Texas.
"Registered:
"FRED W. RUAFF,
"County Treasurer."

And defendant says that said order only authorized the issuance of eighty-six bonds of one thousand dollars each, and directed that they should be dated within ten days of February 9, 1886, which was in fact complied with by dating those numbered one to sixty on the 11th, and those numbered sixty-one to eighty-six on the 15th of February, 1886 and delivering them to the contractors aforesaid.

That the issuance of the bonds aforesaid fully satisfied the order of the Commissioners' Court aforesaid and the said ten bonds subsequently issued, to which coupons were attached, involved in this suit, were issued in fact without an order of the said Commissioners' Court to support them, and are therefore void in law. Defendant further says that the law requires a dealer in county bonds to know the provisions of the act of the Legislature, and the order of the County Commissioners' Court under and by virtue of which such bonds were issued, whether referred to on the face of the bonds or not; that the said plaintiffs were informed from the act of the Legislature, the order of February 9, 1886, and the bonds given December 6, 1886, purchased by them, to which coupons are attached, that there was a difference of ten months between the order of the court and the bonds purporting to have been issued thereunder, and whereas the order required the total issue of bonds authorized to be dated within ten days from February 9, 1886, Sixty thousand dollars when the court house contract was signed, and twenty-six thousand dollars when the jail contract was signed, both contracts to be signed within ten days that all of said bonds were, under said order and to be delivered before December 1886, as the court house was to have been completed within one year and the jail in six months from the date of contracts, and one-half of the court house and jail bonds were to have been delivered to the contractors on the signing of the contracts, and the other half when the respective buildings were one-half completed, and thus requiring delivery in all probability, of all the bonds within seven or eight
15 months from February 9 1886; that the County Judge was authorized to sign and deliver the bonds, sixty to Britton and twenty-six to Anderson; that before delivery they must have been executed by the County Clerk, Registered by the County Treasurer; that the delivery of the said bonds satisfied said order of February 9th, 1886; that by the numbering of the said ten bonds of December 6, 1886 offered for sale, from eighty-seven to ninety-six inclusive evidenced that more than eighty-six bonds were being issued under said order, and that these facts being known were sufficient to put plaintiffs upon inquire as to whether these bonds were in excess of the amount authorized by the said order, and being thus put upon inquiry as to such facts, it became plaintiff's duty to use reasonable diligence to ascertain as to whether the bonds of December 6, 1886 offered them were in fact in excess of the amount authorized by such order, and the failure of plaintiff to follow up the information in its possession is and was in law inconsistent with good faith, and affects them with notice of the invalidity of said bonds and coupons attached thereto. Wherefore defendant says that the bonds and coupons sued upon and described in said

plaintiffs petition are fraudulent, illegal and void, and this, the defendant is ready to verify.

BEALL & KEMP,
J. A. GILLETT,
Attorneys for Defendant.

STATE OF TEXAS, *County of Taylor:*

Before me, the undersigned authority, on this day personally appeared J. A. Gillett, who signed and subscribed the foregoing pleas numbered one and two, after being duly sworn, says the facts stated therein are true.

J. A. GILLETT.

Sworn to and subscribed before me, this the 3rd day of October, A. D. 1905.

J. H. FINKS, *Clerk.*

And further comes the defendant, by its attorneys and says that the coupons, each and every one of them sued for by plaintiff as set out in his petition, are barred by the statute of limitation of four years, in this, that suit was not brought to recover hereon within four years next after the cause of action accrued, and this the defendant is ready to verify.

16 Wherefore plaintiff ought not to have recovered thereon, and of this defendant prays judgment.

BEALL & KEMP,
J. A. GILLETT,
Attorneys for Defendant.

Now comes the defendant, by its attorneys, and denies all and singular the allegations of plaintiff- petition except as may *be* hereinbefore have been admitted in the foregoing answers, and of this puts itself upon the country.

BEALL & KEMP,
J. A. GILLETT,
Att'ys for Def't.

(Indorsed as follows:) No. 335, The Noel-Young Bond & Stock Co. *vs.* Presidio County. Filed Oct. 3rd. 1905. J. H. Finks, Clerk.

Bill of Exceptions.

Suit in the Circuit Court of the United States for the Northern District of Texas, at Abilene.

No. 335.

THE NOEL-YOUNG BOND & STOCK COMPANY
vs.
PRESIDIO COUNTY.

Bill of Exceptions.

Be it remembered, that on the trial of the above entitled cause, on to-wit, the 3rd day of October A. D. 1905, the following proceedings were had.

The plaintiff brought suit to recover against the defendant on certain bonds numbered 90, 91, 92, 94, 95, and 96, of date December 6th 1886, with interest bearing coupons attached to each of said bonds the recital in each of said bonds being as follows:

"This bond is issued by virtue of an act of the Legislature of the State of Texas, entitled, 'An act to authorized the County Commissioners' Court of the several counties of the state, to issue bonds for the erection of a court house, and to levy a tax to pay for same,

17 Approved February 11th 1881, and by virtue of the provisions of chapter 17, law of called sessions of the 18th Legislature, which said chapter has since been validated by the act of March 27, 1885 authorizing the County Commissioners' Court of the several counties of the state, to issue bonds for the erection of a county jail, and by order of the County Commissioners' Court of said County of Presidio, on the 9th day of February A. D. 1886, and is redeemable before maturity at the pleasure of the county."

Plaintiff alleged that each of said bonds is endorsed and was endorsed at the time of its issuance with the following printed endorsement; Bond No. — $1,000.00, Presidio County Courthouse and Jail Bond." The Plaintiff alleged that each and every of said bonds were alike, of the same tenor and effect (excepting the number thereof) and that they all bore interest at the rate of 8% per annum, payable annually on the 10th day of April, at the State Treasury, on surrender of the proper coupons attached thereto and all of said bonds were duly signed and executed by the proper officers and agents of said County of Presidio, and were duly registered by the Treasurer of said county under the directions and orders of the Commissioners' Court of said County. That by each of said bonds the said County of Presidio promised to pay to the bearer thereof the sum of One Thousand dollars fifteen years after the date thereof, to-wit, fifteen years after December 6, 1886, with interest at the rate of 8% per annum, payable on the presentation and surrender of the proper coupons thereto attached, and that said bonds and coupons were duly issued by virtue of the authority recited in them,

and by authority of law; and that each of said bonds above mentioned had attached thereto fifteen coupons for the sun [sum] of $80.00 each, for the annual interest of 8% provided for in the same, and that in each of said coupons the county promised to pay the bearer thereof the sum of $80.00. That one of said coupons on each of said six bonds became due on the 10th of April of each and every year since their issuance, up to and including the year 1900; and each and all of said coupons were, and are payable to the bearer of the same and were signed by the proper officer of said county, and attested as required by law and that the plaintiff Noel-Young Bond & Stock Company is the bearer and holder of each and all of said bonds numbered as aforesaid, and of the interest coupons which are attached thereto which became due April 10th 1896-1897-1898-1899 & 1900. That all of said six bonds matured and became due and payable on the 6th day of December, 1901, and that
18 there being no coupons on them representing the interest accruing on said bonds after April 10, 1900, there is due upon the same interest at the rate of 8% per annum from April 10, 1900. That the payment of said six bonds of $1,000.00 each aggregating $6,000.00 with interest on the same at 8% per annum from April 10, 1900; and the payment of all of said thirty coupons which became due as hereinafter stated and the interest hereinafter described has been duly demanded, and all of said bonds and coupons have been duly presented to the Commissioners' Court of Presidio County Texas for payment and allowance, and all of the same have been by the Commissioners' Court of Presidio County heretofore wholly refused and disallowed, and payment of the same has been refused, and said Court has refused to recognize said bonds and coupons in any way as just and valid claims against said county; and by the order of said Commissioners' Court said county has repudiated any and all liability on said bonds and coupons. That the principal which fell due on said six coupons for the sum of $80.00 each, which fell due April 10, 1896 is $480.00 and the principal due on said six coupons for the sum of $80.00 each which fell due on April 10, 1897, is $480.00; and the principal due on said six coupons for the sum of $80.00 each which fell due on April 10, 1898, is $480.00 and the principal due on said six co-pons for the sum of $80.00 each, which fell due on April 10, 1899, is $480.00; and the principal due on said six coupons for the sum of $80.00 each which fell due on April 10, 1900, is $480.00, and the principal due on the said six bonds as aforesaid, is $6,000.00. That the County of Presidio has never paid plaintiff the legal owner and bearer of said bonds and coupons any amount due thereon; and the plaintiff is damaged in the sum of $10,000.00.

Plaintiff prayed judgment against said County of Presidio for the amount of the bonds sued upon, to-wit, $6,000.00 with interest on the same at the rate of 8% per annum from April 10, 1900 and for the whole amount of said 30 coupons with interest on the coupons at the rate of 6% per annum from the time they matured respectively on April 10, 1896 April 10, 1897 April 10, 1898, April 10, 1899 and April 10, 1900, and for costs.

Plaintiff's petition was filed the 26th day of July 1904, in the United States Circuit Court for the Western District of Texas at El Paso and the case was transferred by an order of the Hon. T. S. Maxey, Judge of said Court, he being disqualified to try said cause, to the United States Circuit Court for the Northern District
19 of Texas, at Abeline, for trial on to-wit, the 12th day of October A. D. 1904. The defendant Presidio County filed its plea and answer to said action, setting up the following defense thereto.

1. That on the 28th day of March, 1893, in a certain suit pending in the District Court in and for Presidio County, Texas, wherein Ball, Hutchins & Company were plaintiffs and the said Presidio County and the Counties of Brewster, Jeff Davis, Buchell and Foley, in the State of Texas, were the defendants, in which said suit plaintiffs sought to recover judgment for the sum of $1,440.00, being the interest due on certain interest bearing coupons up to and including April 10th 1892 attached originally to bonds numbered 90, 91, 92, 93, 94, 95 and 96, inclusive the said bonds purporting to have been issued on the 6th day of December, 1886, by Presidio County, for $1,000.00 each, payable to bearer fifteen years after date, with interest at the rate of 8% per annum, which interest was evidenced by fifteen coupons attached to each of said bonds of $80.00 each, each numbered consecutively from one to fifteen, of which coupons plaintiffs alleged they were the holders and bearers, and became so for value before maturity, without notice of any irregularity or infirmity affecting the validity of either the said bonds or coupons. That among other defenses plead by Presidio County in said suit, it was alleged that if said bonds were issued and delivered to Plaintiffs or their assignors, they were so issued and delivered for an unlawful purpose, to-wit, for the purpose of furnishing the Courthouse at Marfa, as per specifications of a certain contract made with Britton and Long for the sum of $7,000.00, as appears from the proceedings of the Commissioners' Court of Presidio County, dated December 4th, 1886; that the order and proceedings of said Commissioners' Court in the issuing and delivering of said bonds for the aforesaid purpose were fraudulent and illegal and void, and that the contractors to whom said coupons and bonds were issued, and the subsequent holders thereof had notice of the purposes above stated, for which said bonds were issued, and in said plea it was further alleged that Presidio County, the defendant herein issued certain bonds numbered one to sixty, inclusive, for the purpose of building a court house, with interest coupons attached, which were delivered to J. H. Britton, a contractor: that bonds and coupons for building a jail, numbered sixty-one to eighty-six, inclusive were delivered, to D. C. Anderson, a
20 contractor, that bonds for the construction of waterworks, numbered from eighty-seven to eighty-nine, inclusive, with interest coupons attached, were issued to J. H. Britton and that coupons attached to said bonds numbered from ninety to ninety-six, inclusive, the subject matter of said suit, were issued on the 6th day of December 1886, and delivered, to Britton & Long, contractors

for the purpose of purchasing furniture for the Court house at Marfa; and that if said County Commissioners' Court had any authority in law to issue bonds for the building of the Court house and jail at Marfa, such power had been exhausted by issuing the bonds numbered one to eighty-six inclusive and the interest coupons attached thereto, and that the subsequent issuance and delivery of bonds for furnishing the Court house was without authority of law, fraudulent and void; and that the proceedings of the Commissioners' Court in relation thereto affected with notice all persons purchasing and dealing in said bonds and interest coupons, and especially the plaintiff in said suit, and defendant says in issue joined upon said pleading by the plaintiffs and the defendant as aforesaid, the District Court of Presidio County, the Honorable C. N. Buckler presiding, before whom said cause was tried without a jury, a jury being waived, entered in substance the following judgment, to-wit,

BALL, HUTCHINGS & COMPANY
vs.
PRESIDIO COUNTY ET ALS.

"Now on this, the 28th day of March 1893, this cause came on for trial, and all the parties to the action announced ready for trial, and a jury being waived, and after hearing the evidence and argument of counsel, was of the opinion that the law and the facts were with the defendants and so found; wherefore, the Court doth order and adjudge that the plaintiffs herein, Ball, Hutchings & Company, recover nothing against the defendants, Presidio County, Jeff Davis County Brewster County, Buchel County and Foley County, and that the said defendants, and each of them, go hence without day and recover their costs of the plaintiffs herein, and that the plaintiff Ball, Hutchings & Company pay all the costs incurred in this action, and that execution issue therefor and to the judgment of the Court as heretofore set out the plaintiffs, by their counsel, in open court excepted and gave notice of appeal." And defendant says that the coupons and bonds referred to in the plaintiff's petition in the case are the same bonds to which the coupons were
21 attached that were sued upon in the aforesaid case, in which judgment was rendered against the plaintiffs Ball, Hutchings & Company, except the bonds and coupons attached thereto numbered ninety-three, which are not involved in this suit, and defendant further alleged that the judgment rendered against the plaintiff in said suit of Ball, Hutchings & Company *vs.* Presidio County, in the District Court of Presidio County Texas, was thereafter in all things affirmed by the Supreme Court of the State of Texas, on to-wit, the 4th day of March A. D. 1895, and defendant alleged that the aforementioned suit was for the interest upon the coupons attached to bonds numbered from ninety to ninety-six inclusive, and are the same identical bonds sued on in this case, except bond No. 93 as aforesaid, as by the record and proceedings thereof will more fully appear, which said judgment of the District Court of Presidio County was affirmed by the Supreme Court of the State of Texas and still remains in full force and effect, and is in no wise

reversed or made void and this the defendant is ready to verify by such record. Wherefore the defendant plead such judgment in bar of this suit and prayed judgment against the plaintiff in this case thereon and for all costs, etc.

2. The defendant further plead in this suit that the plaintiff ought not to recover upon the said bonds and coupons attached and sued upon in this case, being numbered 90, 91, 92, 93, 95, and 96, because the same were issued and delivered to Britton & Long contractors, for the fraudulent and illegal purpose of furnishing the Court house at Marfa, which had already been constructed, and because said bonds and coupons attached thereto were issued without any lawful authority, in this; that the power of the county to erect a court house and jail at Marfa having been exhausted, as appears from the order of the Commissioners' Court of Presidio County on February 9, 1886, recited in the face of said bonds and contract therein mentioned, that the purchasers of the bonds in this suit were put upon inquiry and affected with notice of the fraudulent and illegal character of said bonds; that is to say, that on the 9th day of February, 1886 the Commissioners' Court of Presidio County, Texas, entered an order embodying the following:

1. The bid of Britton to construct a court house at Marfa Presidio County Texas, for sixty thousand dollars, to be paid in courthouse and jail bonds; and that of Anderson to construct a jail at the same place for twenty-six thousand dollars, to be paid in the same kind of bonds, which were accepted.

22 (2.) Britton and Anderson were respectively required within ten days from February 9, 1886, the date of said order to enter into contract to construct same.

(3.) Work to begin within twenty days from date of contracts, and the court house to be finished within one year, and the jail to be finished within six months from date of contracts;

(4.) The bonds were to be of the denomination of $1,000.00 each, to bear interest at 8% to run fifteen years from their dates, and the $60,000.00 to be delivered to Britton were to bear same date as his contract to build the courthouse $30,000.00 of them to be delivered when the contract was signed, and $30,000.00 when the court house was half finished; and the $26,000.00 to be delivered to Anderson were to bear the same date as his contract to build the jail, $13,000.00 of them to be delivered to him when the contract was signed and $13,000.00 when the jail was half finished.

(5.) And the County Judge was authorized on behalf of the county to enter into said contracts with Britton and Anderson, and to issue, and to deliver to them respectively, said bonds as above provided; that sixty of said bonds numbering from one to sixty inclusive, were dated February 11th, 1886 and delivered to Britton and that twenty-six of said bonds, numbering from sixty-one to eighty-six, inclusive, were dated February 15, 1886, and delivered to Anderson, said eighty-six bonds being for $1,000.00 each were of the bonds authorized to be issued by said order of February 9, 1886, of the Commissioners' Court of Presidio County, and each bond was in the same words and figures, with the exception of num-

bers and dates, that on the 6th day of February, 1886, the Commissioners' Court of Presidio County, for the purpose of paying for the furnishing of said courthouse and erecting a system of water works for said courthouse and jail, then already constructed delivered to Britton & Long ten bonds numbered eighty-seven to ninety-six, inclusive, which said bonds being numbered and containing the recitals set out in the aforesaid bonds described in plaintiff's petition. The defendant plead that said order only authorized the issuance of eighty-six bonds of one thousand dollars each and directed that the [they] should be dated within ten days of February 9th, 1886, which was in fact complied with by dating those numbered from one to sixty on the 11th, and *those numbered from one to sixty on the 11th, and* those numbered from sixty-one to eighty-six, on the 15 day of February, 1886, and delivering them to the contractors respectively, as aforesaid, and the said ten bonds
23 subsequently issued on the 6th day of December, 1886 thereafter, to which coupons were attached being the same bonds and coupons involved in this suit, were issued in fact without any order of said Commissioners' Court to support them, and are therefore, void in law; that the law requires a dealer in county bonds to know the provisions of the Act of the Legislature and the order of the Commissioners' Court under and by virtue of which such bonds were issued, whether referred to on the face of the bonds or not that the said plaintiffs were informed from the act of the legislature; the order of February 9, 1886, and the bonds given December 6, 1886, purchased by them, to which coupons were attached, that there was a difference of ten months between the order of the court and the bonds purporting to have been issued thereunder; and whereas, the order required the total issue of bonds authorized to be dated within ten days from February 9, 1886, Sixty thousand dollars when the courthouse contract was signed, and twenty-six thousand dollars when the jail contract was signed, both contracts to be signed within ten days: that all of said bonds were under said order, and to be delivered before December, 1886, as the court house was to have been completed within one year, and the jail in six months from the date of the contracts; and one-half of the court house and jail bonds were to have been delivered to the contractors on the signing of the contracts, and the other half when the respective buildings were one-half completed, and thus requiring delivery of all the bonds within seven or eight months from February 9, 1886; that the County Judge was authorized to sign and deliver the bonds—sixty to Britton and twenty-six to Anderson, that before delivery the said bonds must have been executed by the County Clerk, and registered by the County Treasurer; that the delivery of the said bonds as aforesaid satisfied said order of the court of February 9, 1886; that by the numbering of the said ten bonds of December 6, 1886, offered for sale, from eighty-seven to ninety-six inclusive, evidenced that more than eighty-six bonds were being issued under said order, and that these facts being known were sufficient to put plaintiffs upon inquiry as to whether or not these

bonds were in excess of the amount authorized by said order; and being thus put upon inquiry as to such fact it became and was plaintiff's duty to use reasonable diligence to ascertain whether or not the bonds of December 6, 1886 offered them were in fact in excess of the amount authorized by such order, and the failure of plaintiff to follow up the information in its possession is,
24 and was in law inconsistent with good faith and effects [affects] said plaintiff with notice of the invalidity of said bonds and coupons attached thereto.

Wherefore, defendant plead that the bonds and coupons sued upon, and described in said plaintiff's petition, were and are illegal, fraudulent and void.

These two pleas were duly verified by the duly authorized agent of said defendant.

(3.) Defendant further plead that each and every one of the said coupons sued upon by the plaintiff, as set out in its petition were barred by the statute of Limitation of four years.

(4.) The defendant plead general denial of the facts alleged in plaintiff's petition, except as to any facts that were admitted in the foregoing pleas.

The Plaintiff, the Noel-Young Bond & Stock Company, introduced in evidence on the trial of this case the six bonds described in its petition, and the thirty coupons sued upon in same, to-wit, bonds numbered 90, 91, 92, 94, 95, and 96 all of date December 6th 1886, and all alike in form excepting their numbers. The following is a copy of each of said bonds (the numbers being different as stated.)

"THE STATE OF TEXAS,
"County of Presidio: "No. — $1,000.00.

"The County of Presidio, in the State of Texas, will pay the bearer $1000, fifteen years after date, with interest at the rate of 8 per centum, payable annually on the 10th day of April, at the state Treasury, on surrender of the proper coupon hereto attached. This bond is issued by virtue of an act of the Legislature of the State of Texas, entitled 'An act to authorize the County Commissioners' Court of the several counties of the State to issue bonds for the erection of a courthouse and to levy a tax to pay for the same,' approved February 11, 1881, and by virtue of the provisions of chapter 17 laws of called session of the Eighteenth Legislature, which said chapter has since been validated by the act of March 27, 1885, authorizing the County Commissioners' Court of the several counties of the State to issue bonds for the erection of a county jail, and by order of the County Commissioners' Court of said County of Presidio, on the 9th day of February 1886, and is redeemable before maturity at the pleasure of the County.

25 In testimony whereof the County Commissioners' Court of Presidio County has caused to be hereto affixed the seal and

signature of the proper officers of said Court, this 6th day of December 1886.

J. S. CATLIN,
"County Judge of Presidio County.

"Countersigned:
W. S. LEMPERT,
"Clerk of the County Court of Presidio County, Texas.

"Registered:
FRED W. ROUFF,
"County Treasurer."

Plaintiff also introduced in evidence the following printed endorsement which appears upon the back of each of said bonds:

"Bond No. — $1,000.00 Presidio County Court House and jail Bond."

The said thirty coupons introduced in evidence were the six coupons from said bonds numbers 90, 91, 92, 94, 95, and 96, which became due and payable on the 10th day of April, 1896; the six coupons from said bonds which became due on April 10th, 1897 the six coupons from said bonds which became due April 10th 1898, the six coupons from said bonds which became due April 10th 1899, the six coupons from said bonds which became due April 10, 1900.

Plaintiff read from agreed statement in writing an admission upon the trial of the cause that the six bonds sued upon and the thirty coupons above described had been presented to the County Commissioners' Court of Presidio County for payment and were disallowed by said Court before the filing of this suit.

The defendant offered and read in evidence from an agreed statement of facts the following portions thereof in substance.

The Plaintiffs' petition in the case of Ball, Hutchings & Company *vs.* Presidio County No. 227, filed in the District Court of Presidio County Texas on August 15th 1892, in which plaintiff in said cause No. 227 sought to recover upon certain coupons which matured prior to and on the 10th day of April, 1892, which said coupons were attached originally to bonds numbers 90, 91, 92, 93, 94, 95, and 96, it being alleged in said petition filed in said case on August 15th, 1892, that Ball, Hutchings & Company were the owners and legal holders of the seven bonds and the coupons sued upon in said case numbered 227 which were attached to said bonds numbers 90 to 96 inclusive, and it was alleged that said bonds had been issued by Presidio County.

26 The defendant Presidio County offered in evidence the answer filed by defendant in said case setting up the same defenses as are plead in this suit to show the invalidity and illegality of said bonds.

Defendants also introduced as evidence the judgment of the District Court of Presidio County rendered in said cause on the 28th day of March 1893, in words and figures as follows:

No. 227.

"BALL, HUTCHINGS & Co.
vs.
PRESIDIO COUNTY ET AL.

"Now on this, the 28th day of March, 1893, this cause came on for trial, and all the parties to the action announced ready for trial, and a jury being waived, the Court after hearing the evidence and argument of counsel was of the opinion that -he law and the facts were with the defendants, and so found, wherefore the Court doth order and adjudge that the plaintiffs herein Ball Hutchings & Co. recover nothing against the defendants Presidio County, Jeff Davis, Brewster County Buchel County and Foley County, and that said defendants and each of them go hence without day, and recover their costs of the plaintiffs herein; and that the plaintiffs Ball, Hutchings & Co. pay all the costs incurred in this action, and that execution issue therefor. And to the judgment of the Court as heretofore set out the plaintiffs by their counsel, in open court excepted and gave notice of appeal, and plaintiffs' exceptions to the findings of the Court were overruled."

The defendant also offered in evidence the record of the case on appeal and the decision of the Court of Civil Appleals [Appeals] as reported in S. W. Reporter vol. 27 p-. 702-707, in which said Court reversed the judgment of the District Court of Presidio County, and rendered the same in favor of the plaintiff, Ball, Hutchings & Company, and also the record of the judgment of the Supreme Court of the State of Texas in said cause, in which said Court reversed the judgment of the Court of Civil Appeals, and affirmed the judgment of the District Court of Presidio County. The Supreme Court holding in its said judgment and opinion as reported in vol. 88, Tex. Sup. Ct. Reports, p-. 60 to 66.

This evidence was offered and read in support of defendants' pleas of former judgment in bar of plaintiffs' action.

27 The defendant offered and read in evidence in support of its second plea in which the bonds and coupons attached thereto sued upon in plaintiffs' petition alleged to have been issued fraudulently and without lawful authority, not being supported by any order of Court authorizing the issuance and delivery of said bonds the statement of facts, agreed upon, in the case of Ball, Hutchings & Company *v.* Presidio County *et al.*—The following portions of which are embodied substantially in this Bill of Exceptions as follows:

(1.) The defendant offered in evidence the order of the County Commissioners' Court of said County of Presidio 9th day of February 1886 as follows:

"Commissioners' Court Minutes, February Term, 1886.

"Now on this, the 9th day of February, A. D. 1886, Commissioners' Court being in regular session, and having met pursuant to adjournment, with the following officers present, to-wit: Hon. T. T.

Harnett, County Judge; J. A. Wedell, Co. Com'r Precinct No. 1; G. W. Brown, Co. Com'r Precinct No. 2; J. F. Ellison, Co. Com'r Precinct No. 3; H. L. Kelly, Co. Com'r Precinct No. 4; C. L. Nevill, Sheriff, M. F. Brown, Co. Attorney; W. S. Lempert, Clerk, came on to be heard and considered by the Court the matter of contracts for the construction of court house and jail for Presidio County, and the same having been fully considered by the Court, it is ordered by the Court that the bid of J. H. Britton to construct a court house in accordance with the plans and specifications furnished by him and now on file in this Court, for the sum of Sixty Thousand ($60,000.00) Dollars, to be paid in county court house and jail bonds bearing even date with the contract to be entered into in accordance with law and bearing interest at the rate of 8% per annum payable in fifteen years as provided by law.

"Said bonds to be paid and delivered to the said J. H. Britton in the following installments, to-wit: Thirty thousand (30,000) dollars upon the execution of the contract and bond, and the remainder thirty thousand (30,000) dollars when the said court-house is one-half constructed, be and the same is hereby accepted.

"And it is further ordered by the Court that the bid of D. C. Anderson to construct a jounty [county] jail for said County of Presidio, in accordance with the plans and specifications furnished by Alfred Giles, and now on file in this Court, for the sum of Twenty-six Thousand dollars (26,000), to be paid in Presidio
28 County Court house and jail bonds, bearing even date with this contract, to be entered into, and bearing interest at the rate of 8 p-r cent. p-r annum and payable in fifteen years, as provided by law, said bonds to be paid and delivered to the said D. C. Anderson in the following installments, to-wit: Thirteen thousand (13,000) dollars upon the execution of the contract and bond in accordance with this order, and the remaining Thirteen thousand (13,000) dollars when the said county jail is one-half constructed, be and the same is hereby accepted.

"It is furth-r ordered by the Court that the said J. H. Britton shall enter into a good and sufficient bond with two or more sureties in the sum of One Hundred Thousand dollars, to be approved by the County Judge of Presidio County; and that the said D. C. Anderson shall enter into a good and sufficient bond, with two or more good and sufficient sureties, in the sum of fifty thousand (50,000) dollars, to be approved by the County Judge of Presidio County; the said bonds to be conditioned upon the faithful compliance by said J. H. Britton and the said D. C. Anderson with the said contract.

"It is further ordered by the Court that upon the said J. H. Britton and the said D. C. Anderson making and delivering to the County Judge of Presidio County the bonds hereinbefore required, the said County Judge of Presidio County is hereby authorized and empowered to enter into, in behalf of Presidio County, a written contract with the said J. H. Britton and the said D. C. Anderson for the construction of said court house and jail upon the terms hereinbefore specified; and is further authorized and empowered to issue county court house and jail bonds for one thousand dollars each to the

amount of eighty six thousand ($86,000) dollars, conditioned as the law provides, and bearing interest at the rate of 8 per cent. p-r annum, and to deliver to the said J. H. Britton thirty thousand (30,000) dollars of said bonds and to deliver to the said D. C. Anderson thirteen thousand (-13,000) dollars of said bonds immediately upon the signing of said (contract) or as soon thereafter as practicable.

"It is further ordered by the Court that the said County Judge of Presidio County is further authorized and empowered to deliver to the said J. H. Britton the additional and remaining thirty thousand (30,000) dollars, in such bonds and to the said D. C. Anderson the additional and remaining thirteen thousand (13,000) dollars in such bonds upon the certificate of the superintendents to be selected and employed by the County, that said court house or said jail, as the case may be, is one-half constructed.

29 "It is further ordered by the Court that C. L. Nevill be, and he is hereby authorized and empowered, in conjunction with said superintendent, to receive and pass upon said jail, and the same shall not be received until the same is accepted by said C. L. Nevill and said superintendent, it is further ordered by the Court that said court house and jail shall be erected in the town of Marfa, County of Presidio, and State of Texas, upon such lot or lots as may be designated by the Commissioners' Court.

"It is further ordered by the Court that the County Judge of Presidio County is hereby authorized and empowered to employ E. Northcraft, if he will accept, or some other competent person, as superintendent of the construction of said court house and county jail and to enter into a contract with the said persons employed, to pay him the sum of two hundred (200) dollars per month as compensation for services as such superintendent.

"It is further ordered by the Court that said contract shall require the said contractors to begin work in the way of preparations within twenty (20) days from date of contract, and that the said Court house shall be completed and finished in twelve (12) months from the date of the contract, and the said county jail shall be completed and finished in six (6) months from date of contract. It is the further order of the Court that J. H. Britton is required to enter into a contract with the County Judge of Presidio County for the construction of a courthouse in accordance with the award within ten days from date of this order, and that the said D. C. Anderson enter into contract with said County Judge for the construction of said jail in accordance with the award within ten (10) days from the date of this order, and that if said contracts are not entered into as herein required, the deposit of five per cent. of the amount of said awards now with the Clerk of this court shall be adjudged forfeited to Presidio County, and that the clerk of this Court notify the said J. H. Britton and D. C. Anderson of the order by delivering to them a certified copy of the same.

The defendant then introduced in evidence the order of the County Commissioners' Court of Presidio County, Texas, of the 8th day of November, 1886; which said order is as follows:

"Be it remembered, that on this, the 8th day of November, 1886 there was begun and holden a regular term of the Commissioners' Court in and for Presidio County, Texas, at Marfa, Presidio County, Texas; officers present, Hon. T. T. Harnett, County Judge of Presidio County; J. A. Wedell, Co. Commissioner Precinct No. 1; G. W. Brown, Co. Commissioner Precinct No. 2; W. J. Bishop, Co. Commissioner Precinct No. 3; H. L. Kelly, Co. Commissioner Precinct No. 4; W. S. Lempert, Clerk; C. L. Nevill, sheriff.

"Now on this the 10th day of November, 1886, came on to be considered the bid of Britton and Long to furnish all material and labor necessary and to complete the waterworks system for the court house and jail in accordance with plans and specifications furnished by E. Northcraft, superintendent, for the sum of Three Thousand Dollars, payable in Presidio County Courthouse and jail bonds bearing 8 per cent. interest.

"It is the order of the Court that said bid be accepted for said system of waterworks for the courthouse and jail as per plans and specifications filed this, the 10th day of November, 1886, with the clerk of this court, and that said bonds issue within a reasonable length of time, amounting to $3,000, payable in fifteen years bearing interest at the rate of 8 per cent. per annum, and to be dated on the first day of December, A. D. 1886.

"It is the further order of the court that said Britton and Long be, and they are required to complete said waterworks system without any unnecessary delay. It is the further order of the court that the County Judge of Presidio County be, and he is hereby authorized and empowered to issue *h*onds in accordance with this order."

The defendant next offered in evidence the following order of the Commissioners' Court of Presidio County, Texas, to-wit:

"Commissioners' Court Minutes, December Term, 1886.

SATURDAY, *the 4th Day of December*, 1886.

"Court met pursuant to adjournment, officers present, Hon. J. H. Catlin, Co. Judge; H. D. Lindenborn, Co. Com'r Prec't No. 1; G. A. Brown, Co. Com'r Prec't No. 2; J. A. Wedell, Co. Com'r Pr-c't No. 3; H. L. Kelly, Co. Com'r Prec't No. 4; C. L. Nevill, sheriff; W. S. Lempert, cl'k.

"Now on this day it is the order of the Court that the bid of Britton and Long to furnish the court house with furniture, &c., as per specifications of Britton & Long now on file in this Court, for the sum of $7,000.00 be and the same is hereby accepted and that the necessary contract be entered into.

"Now on this day it is the order of the Court that payment for the furniture &c., for courthouse to be *constructed* for by Britton and Long be made in advance, to which order and the order accepting said bid J. H. Catlin, County Judge, entered his protest in open Court."

31 Plaintiff then offered in evidence the testimony of J. H. Catlin, County Judge of Presidio County, as follows:

"That he Catlin, was County Judge of Presidio County on December 4, 1886, and that on or about that date, bids were received by the Commissioners' Court of said county to furnish the courthouse with good and substantial furniture, such as was necessary to carry on the business of the county. There were two bids received for furnishing said court house with the proper furniture. The contract was awarded to Britton & Long, and in payment for said furniture bonds were issued and delivered to the said Britton and Long, Nos. 90-96, inclusive. He, Catlin, as County (Judge) presid*ing* at this meeting of the County Commissioners' Court, and entered his protest of record against the awarding of said contract, but inasmuch as he was overruled by a majority of the court, he signed the bonds as County Judge, said bonds were issued and delivered to said Britton and Long in payment of said furniture and said bonds were issued and made out upon the same lithographic blanks which were left over from the original lithographic blanks for bonds for courthouse and jail."

Defendant next introduced in evidence the following order of the County Commissioners' Court of Presidio County, Texas, as follows:

Now on this, the 9th day of February A. D. 1886 Commissioners' Court being in regular session and having met pursuant to adjournment with the following officers present, to wit, Hon. T. T. Harnett, County Judge; J. A. Wedell, Co. Com'r Pr-c't No. 1; G. W. Brown, Co. Com'r Prec't No. 2; J. F. Ellison, Co. Com'r Prec't No. 3; H. L. Kelly, Co. Com'r Prec't No. 4; C. L. Nevill, sheriff; M. F. Brown, Co. Attorney, and W. S. Lempert, Clerk.

"Now on this day it is the order of the court that the clerk of this Court order at once for the use of the county, one hundred blank Court house and jail bonds, to bear interest at the rate of 8 per cent., said bonds to be printed on durable paper or parchment similar to the bonds issued by El Paso County, Texas said bonds to be in accordance with a form for the same, which is hereby directed to be furnished said clerk by the county attorney of said county."

Defendant offered in evidence a tabulated statement of the bonded indebtedness of Presidio County, Texas, showing that under the [order] of Feb. 9, 1886, authorizing the issurance [issuance] of sixty bonds and coupons attached, for the building of the Courthouse dated February 11, 1886; and twenty-six bonds, with coupons attached for the building of the jail, dated February 15, 1886,

32 were issued and registered, the bonds aforesaid were for one thousand dollars each, with interest coupons attached, and numbered consecutively from one to eighty-six, inclusive and under the order of the 8th day of November, 1886, these bonds were issued, numbered 87 to 89, inclusive, and dated November 27, 1886, and registered about the same date by the County Treasurer. That the bonds numbered from 90 to 96 inclusive, were dated December 6, 1886, and registered by the County Treasurer on the same date, being the bonds sued on in the case, except No. 93. Defendant then offered in evidence by agreement the deposition of F. M. Ball, taken

in the year 1892, in said cause No. 227, Ball, Hutchings & Company *vs.* Presidio County then in the District Court of Presidio County, Texas, and by deposition in said cause No. 227 taken by Plaintiff in the year 1892 said F. M. Ball testified as follows; I am the owner of only four of the bonds, being numbers 90, 92, 94, and 96. I have disposed of the others to Mr. J. C. League. I have originally bought seven. The bonds were sent to the attorneys for plaintiff, Ball, Hutchings & Co., at El. Paso. I bought the seven bonds of Mr. John T. Long who sold me same in Galveston on December 10th, 1886, and when I purchased these bonds all their coupons were attached, they being newly issued. I paid $7,006.22, said price being par and interest. I considered the bonds perfectly good or I should not have bought them. At the time of my purchase I had no notice of any facts affecting the legality of said bonds and coupons, and I received no notice of any other facts connected with the issuance of said bonds except as recited in said bonds. I purchased said coupons and bonds as an investment, having idle money for that purpose.

"At the time I purchased the bonds I made no statement that I was afraid the bonds were illegally issued; or words to that effect; nor did I make any inquiry as to whether or not there was pending in Presidio County any suit or proceedings as to the illegality of said bonds; nor did I ever see or hear of any advertisement or notice being published in the Galveston Daily News or other paper, emanating from the taxpayers of Presidio County concerning the issurance [issuance] of said bonds as to their being in any manner illegal. On application at the office of A. H. Belo & Co. for a copy of the Galveston News containing said advertisement or notice I was informed that if they had in their possession an issue of the Galveston News containing such advertisement that they were too busy to furnish me with a copy."

33 Defendant also introduced in evidence by agreement the deposition of J. C. League, which was taken in said cause No. 227, Ball, Hutchings & Co., *vs.* Presidio County, in the year 1892, and in said deposition taken as aforecaid in the year 1892 in said cause No. 227, J. C. League testified as follows:

"That he was the owner of the bonds and coupons described in plaintiff's petition; that he could not describe the bonds, but that they are the same in description and the same in issue as those bonds owned by F. M. Ball; that he did not have the bonds, and could not obtain a copy to attach to his deposition; that he had sold the bonds to which the coupons were attached; that he purchased the bonds and coupons with F. M. Ball from a party purporting to be the contractor for building the Court house for which the bonds were issued; that Ball paid for the seven bonds described in plaintiff's petition, and that he paid Ball for three of them with the attached coupons; that he paid full or par value for the bonds and accrued interest at the time he purchased them with attached coupons, that at the time he purchased them he was investing a considerable sum of money in Texas County bonds issued for Court house and jail purposes; that he purchased the bonds on or about December 10, 1886; that at the time he purchased them Mr. Ball

came into his office with a party representing himself to be of a firm of contractors who had secured the seven bonds in part payment for building the Court house at Marfa, and that the contractors had agreed to sell all of said seven bonds if taken as a whole, at par and accrued interest; that Ball did not want to invest in more than four bonds, and that he (witness) agreed with Ball to take the other three bonds; that Ball bought the bonds at par and accrued interest; that witness paid him for three bonds at par and accrued interest; that he questioned the party offering the bonds for sale as to whether there was anything about the bonds affecting their legality, and that the party told him and Ball there was not; that he was never informed nor did he have any notice of any facts connected with the issuance of said bonds, except as were stated in said bonds; that he purchased said bonds as an investment, and was induced to do so because he thought the bonds were good and a safe investment.

Cross-examination:

I purchased said bonds and coupons about December 10, 1886, from F. M. Ball directly but through *of* a party claiming to have been one of the contractors who built the Court house of
34 Presidio County for which the bonds were issued in part payment. I paid for the bonds par and accrued interest to date of purchase. My recollection is that the first maturing coupon was for a fractional amount of interest, amounting to something like $27.00 to $28.00 on each bond to the date the first payment was due—April 10, 1887. I think I paid two or three dollars accrued interest in each bond to December 10, 1886."

"The defendant also introduced by agreement the deposition of George Sely taken by the plaintiffs in the year 1892 in said cause No. 227, Ball, Hutchings & Co. *vs.* Presidio County, and in said cause in the year 1892, the said George Sely testified by deposition as follows:

"That the firm of Ball, Hutchings & Company are not the owners of the coupons mentioned in said suit No. 227 in District Court Presidio County, but merely agents for their collection; that the coupons actually belonged on four (4) bonds to Frank Ball and on three (3) bonds to J. C. League; that the seven bonds mentioned were purchased by Frank Ball on the 10th day of December 1886 from John T. Long, at par and interest and Mr. Frank Ball then sold to Mr. J. C. League three (3) of said bonds at par with interest."

At the close of the evidence counsel for plaintiff, the Noel-Young Bond & Stock Company in this case, admitted that the coupons sued upon in this case were barred by the statute of limitations of four years, and the Court thereupon instructed the Jury orally, as follows: Gentlemen of the Jury. In this case, you will return a verdict in favor of the plaintiff against the defendant, Presidio County, for the amount of the principal of the bonds sued upon, with interest thereon at the rate of 8% per annum from the 6th day of December 1900." and the Court stated to the jury that the coupons sued upon were barred by the statute of Limitations." To which charge of the Court in the presence of the jury, and before the jury retired

to consider of its verdict, the defendant excepted to that portion of the charge wherein the jury were instructed to "Return a verdict in favor of the plaintiff against the defendant for the amount of the bonds sued upon, with interest thereon at the rate of 8% per annum from the 6th day of December 1900," on the following grounds: Because the judgment of the District Court of Presidio County rendered on the 28th day of March 1893, which was affirmed on error by the Supreme Court of Texas, in which bonds sued on in this case were held void, was under the pleadings and
35 evidence in this case a bar to plaintiff's action; second, because under the pleadings and undisputed evidence in this case, the said bonds were issued without lawful authority not being supported by any order of the Commissioners' Court of Presidio County, authorizing the issuance of the same. Third, because said bonds were issued and delivered to Britton & Long, contractors, for the illegal purpose of furnishing the court house at Marfa, which had already been constructed, and were issued without any lawful authority, the power of the county to issue bonds to erect a court house and jail at Marfa, having been exhausted as appears from the order of the Commissioners' Court of Presidio County, on February 9th, 1886, which is recited in the face of said bonds, and the contracts mentioned in said order of the court, and the registry of said bonds affected with notice the purchasers of the bonds in this suit, that said bonds were issued without authority of law.

Thereupon the defendant asked the Court to give the following Charge, "You are instructed that the Supreme Court of Texas having held the bonds sued upon void; and it appearing from the evidence and admission of parties in Court that the interest coupons sued upon in this case are barred by the statute of limitation, you will return a verdict for the defendant;" which said charge was refused by the Court, to which the defendant excepted at the time on the grounds states [stated] in the foregoing exception. And thereupon the jury retired under the oral instruction aforesaid by the court and rendered a verdict in favor of the plaintiff and against the defendant for the sum of Six Thousand ($6,000.00) Dollars, with 8% interest thereon from December 6th, 1900, and judgment of the court was rendered upon the said verdict for the sum of eight thousand three hundred & sixteen dollars and to the verdict and judgment thereon, the defendant excepted on the ground that under the issues joined and the evidence in the case the jury should have been instructed by the Court to find for the defendant, and the defendant requested that its Bill of exceptions, taken at the time, be now signed, allowed, and approved by the Court, and made a part of the record, under the order of the Court, made at the time, granting a period of thirty days within which to prepare and file this Bill of Exceptions, which is accordingly done.

EDWARD R. MEEK,
U. S. District Judge.

In Chambers, at Fort Worth, Oct. 28th 1905.

36 (Indorsed as follows:) The Noel-Young Bond & Stock Co., *vs.* Presidio County. Bill of Exceptions. Filed 30th Oct. 1905. J. H. Finks, clerk, By F. W. Girand, Deputy.

Oral Charge of Court.

"GENTLEMEN OF THE JURY: In this case, you will return a verdict in favor of the plaintiff against defendant, Presidio County, for the amount of the principal of the bonds sued upon, with interest thereon at the rate of 8% per annum from the 6th day of December, 1900;" and the Court stated to the jury that the coupons sued upon were barred by the statute of Limitations.

Defendant's Special Charge.

In U. S. Circuit Court, Northern District of Texas.

No. 335.

THE NOEL-YOUNG STOCK AND BOND COMPANY
vs.
PRESIDIO COUNTY.

Gentlemen of the jury you are instructed in this case to return a verdict in favor of the defendant, Presidio County.

J. A. GILLETT,
BEALL & KEMP,
Att'ys for Defendant.

Refused.
EDWARD R. MEEK, *Judge.*

(Indorsed as follows:) No. 335, The Noel-Young Stock & Bond Co., *vs.* Presidio County. Refused Chg. Filed Oct. 3, 1905. J. H. Finks, clerk.

Verdict of Jury.

In the United States Circuit Court, For the Northern Judicial District of Texas, at Abeline. Verdict of the jury in the case of The Noel-Young Bond & Stock Company, *vs.* The County
37 of Presidio. No. 335.

We the jury find for the plaintiff for the amount of the bonds $6,000.00 with interest from Dec. 6th 1900 at 8% per annum.

W. L. DURRETT, *Foreman.*

(Indorsed as follows:) No. 335, U. S. Cir. Court, at Abeline, Texas. The Noel-Young Bond & Stock Co., *vs.* Presidio County. Verdict filed Oct. 3, 1905. J. H. Finks, clerk.

Judgment.

Transferred from U. S. Cir. Ct. W. D. T., at El Paso.

THE NOEL-YOUNG BOND & STOCK COMPANY
vs.
COUNTY OF PRESIDIO.

On this the 3rd day of October 1905 the above styled cause came on for trial. Both parties appeared by their attorney and announced themselves ready for trial. A jury consisting of D. W. Stephens, W. H. Robertson, J. H. Stamp, W. C. Martin, W. L. Durrett, R. L. Settoh, Burnie Miller, H. J. Haddington, T. M. Green, J. B. Ammerman, Fred Alvoid and R. A. Simpson was duly empanneled, qualified and sworn. The Court sustained the defendant's plea of the statute of limitation of four years to all of the coupons sued upon by the plaintiff and instructed the jury, and the jury being further instructed so to do returned into open court the following verdict: Verdict of the jury in the case of the Noel Young Bond & Stock Company, *vs.* the County of Presidio, No. 335:—We the jury find for the plaintiff for the amount of the bonds, $6,000.00, with interest from Dec. 6th 1900 at 8% per annum.

W. L. DURRETT, *Foreman.*

It is therefore ordered and adjudged by the Court that the plaintiff take nothing as against defendant upon any of the coupons sued upon and as to same defendant go hence without a day, and it is ordered and adjudged that the plaintiff, The Noel-Young Bond & Stock Co., (a corporation) do have and recover of and from the County of Presidio in the State of Texas the sum of Eight
38 Thousand three Hundred and Sixteen Dollars and interest on same from this date at the rate of 8 per cent. per annum and all costs in this behalf expended and that said County of Presidio do pay off and satisfy this judgment in the regular course of its business as the law provide, and that all proper process may issue for the enforcement of this judgment.

At the request of defendant's counsel they are hereby allowed 30 days from this date in which to prepare and file their bill of exceptions. Defts. except to charge of Court and *and* refused to give charges asked for.

Petition for Writ of Error.

In the United States Circuit Court for the Northern District of Texas, at Abeline, Texas.

THE NOEL-YOUNG & STOCK COMPANY
vs.
PRESIDIO COUNTY, TEXAS.

Defendant herein, and says that on or about the 3rd day of October, A. D. 1905, this Court entered judgment herein in favor

of the plaintiff against this defendant, in which judgment, and the proceedings had prior thereto in this cause, certain erorrs were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors, which, is filed with this petition. Wherefore this defendant prays that a writ of error may issue in this behalf to the United States Circuit Court of Appeals for the Fifth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals.

T. J. BEALL,
J. A. GILLETT,
Attorneys for Plaintiffs in Error, Presidio County.

Allowed this third day of February 1906.
EDWARD R. MEEK, *Judge.*

(Indorsed as follows:) No. 335. Presidio County, Plaintiff in Error, *vs.* The Noel-Young Bond & Stock Company, Defendant in Error. Petition for Writ of Error. Filed 5th Febr'y 1906. J. H. Finks, clerk, by F. W. Girand, Deputy.

39 *Bond.*

Know all men by these presents, That we Presidio County, Texas, as principal and Chas. S. Murphy and J. Humphries as sureties are held and firmly bound unto The Noel-Young Bond and Stock Company in the full sum of One thousand dollars, to be paid to the said Noel-Young Bond and Stock Company, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 12th day of January in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a term of the Circuit Court of the United States for the Northern District of Texas, at Abeline, in a suit depending in said Court, between The Noel-Young Bond and Stock Company, plaintiff and Presidio County Texas, defendant, numbered 335 on the docket of said Court, a judgment was rendered against the said Presidio County, Texas, on the 3rd day of October A. D. 1905 for the sum of eight thousand three hundred and sixteen dollars and all costs of suit, and the said Presidio County, Texas, having obtained a Writ of Error and filed a copy thereof in the Clerk's office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Noel-Young Bond & Stock Company and its attorneys of record, Millard Patterson, of El Paso County, Texas, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Fifth Circuit, to be holden at Fort Worth, Texas, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Presidio County shall prosecute its writ of error to effect, and answer

all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

PRESIDIO COUNTY, TEXAS,
By W. W. BOGEL,
[SEAL.] *County Judge of Presidio County, Texas.*

CHAS. S. MURPHY.
J. HUMPHRIES.

Approved this the third day of February, 1906.
EDWARD R. MEEK,
United States Judge.

THE STATE OF TEXAS, *County of Presidio:*

Before me, the undersigned authority, on this day came
40 Chas. S. Murphy and J. Humphries each personally known to me, and each of whose signatures is attached to the bond on the reverse side hereof, as surety, and after having been first duly sworn, each on his oath deposes and says: That he is worth more than the sum of one thousand dollars, over and above all his indebtednesses, and has property subject to execution of more than the value of one thousand dollars.

CHAS. S. MURPHY.
J. HUMPHRIES.

Sworn to and subscribed before me this 12th day of January, 1906.
J. A. GILLETT,
Notary Public in and for Presidio County, Texas.

(Indorsed:) Writ of Error Bond. No. 335. Presidio County *vs.* The Noel-Young Bond and Stock Company. Bond. Filed 5 day of Feb'ry 1906. J. H. Finks, Clerk. By F. W. Girand, Deputy.

Assignment of Errors.

In the United States Circuit Court for the Northern District of Texas, Holden at Abeline, Texas.

THE NOEL-YOUNG BOND & STOCK COMPANY
vs.
PRESIDIO COUNTY, TEXAS.

The defendant in this action, in connection with its petition for writ of error, makes the following assignment of errors which it avers occurred upon the trial of the cause, to-wit:

1.

The Court erred in its oral instructions to the jury as follows: "In this case you will return a verdict in favor of the plaintiff for the amount of the bonds sued upon, amounting to the sum of

$6,000.00 with interest at the rate of 8% per annum from the 6th day of December, 1900."

41 2.

The Court erred in refusing to charge the jury to find for the defendant as requested.

3.

The Court erred in refusing to give the following charge asked by the defendant: "You are instructed that the Supreme Court of Texas, having held the bonds sued upon void; and it appearing from the evidence and admission of parties in court that the interest coupons sued upon in this case are barred by the statute of limitation, you will return a verdict for the defendant.

4.

The court erred in entering judgment in favor of the plaintiff and against the defendant.

T. J. BEALL,
J. A. GILLETT,
Attorneys for Defendant, Presidio County, Pl'ff in Error.

(Indorsed as follows:) No. 335. Presidio County, Plaintiff in Error, *vs.* The Noel-Young Bond & Stock Company, defendant in error. Assignment of Errors. Filed 5th Feb'ry 1906. J. H. Finks, Clerk, By F. W. Girand, Deputy.

* * * * * * *

Stipulation of Parties.

PRESIDIO COUNTY, TEXAS, Plaintiff in Error,
vs.
THE NOEL-YOUNG BOND & STOCK CO., Defendant in Error.

Writ of Error to the U. S. Circuit Court, N. D. T., at Abeline, Texas.

It is agreed by and between the attorneys for the plaintiff in error and the defendant in error in the above styled cause that the same shall not be submitted in the U. S. Circuit Court of Appeals
42 before the first day of May, 1906, and it is agreed that the attorney for the plaintiff in error will prepare brief for plaintiff in error and deliver a copy of his brief to the attorney for the defendant in error on or before the 15th day of April, 1906.

BEALL & KEMP,
Attorneys for the Plaintiff in Error.
MILLARD PATTERSON,
Attorney for the Defendant in Error.

(Indorsed as follows:) No. 335. Presidio County, Texas, *vs.* The Noel-Young Bond & Stock Co. Stipulation of Parties. Filed 9th March, 1906. J. H. Finks, Clerk, by F. W. Girand, Deputy.

UNITED STATES OF AMERICA, *Northern District of Texas:*

I, J. H. Finks, Clerk of the Circuit Court of the United States for the Northern District of Texas, do hereby certify that the foregoing 74 pages contain a true and correct copy of the proceedings had in cause No. 335, of Noel-Young Bond & Stock Company, *vs.* Presidio County, Texas, as the same appears on file and of record in this office, and I further certify that the original writ of error and the original citation in error are included in said transcript numbered — and — respectively.

Witness my official signature and the seal of said Circuit Court, at office, in the City of Abilene, Texas, this, the 20th day of March, A. D., 1906.

J. H. FINKS,
Clerk of said Circuit Court,
[SEAL.] By F. W. GIRAND,
Deputy Clerk.

43 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing printed record of 42 pages, in the case of Presidio County, plaintiff in error, against The Noel-Young Bond & Stock Company, defendant in error, numbered 1560, was printed under my supervision, and is identical with the printed records upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 12th day of January, A. D. 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

44 Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on the First Monday in November, A. D. 1906, at Forth Worth, Texas, and on the Third Monday in November, A. D. 1906, at New Orleans, Louisiana, before the Honorable Don A. Pardee, the Honorable A. P. McCormick and the Honorable David D. Shelby, Circuit Judges.

Be it remembered, that heretofore, to-wit: on the 2nd day of May, A. D. 1906, a transcript of record, pursuant to a writ of error to the Circuit Court of the United States for the Northern District of Texas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein Presidio County is plaintiff in error, and The Noel-Young Bond & Stock Company is defendant in error, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 1560.

That thereafter the following proceedings were had in said cause in said Circuit Court of Appeals, viz:

Argument and Submission.

No. 1560.

PRESIDIO COUNTY
vs.
THE NOEL-YOUNG BOND & STOCK COMPANY.

Nov. 13, 1906.

On this day this cause was regularly called, and after argument by T. J. Beall, Esq., and J. A. Gillett, Esq., for plaintiff in error, and Millard Patterson, Esq., for defendant in error, was submitted to the Court.

And thereafter, on December 15, 1906, an opinion of said Circuit Court of Appeals was filed in said cause, in words and figures following, to-wit:

45 *Opinion.*

U. S. Circuit Court of Appeals.

Filed Dec. 15, 1906. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

No. 1560.

PRESIDIO COUNTY
v.
NOEL-YOUNG STOCK & BOND CO.

Error to the Circuit Court of the United States for the Northern District of Texas.

Before Pardee, McCormick and Shelby, Circuit Judges.

By the COURT:

Judgment affirmed.

And on the 15th day of December, A. D. 1906, in the record of the proceedings of said Circuit Court of Appeals, is a judgment in said cause, in the words and figures following, to-wit:

Judgment.

No. 1560.

PRESIDIO COUNTY
vs.
THE NOEL-YOUNG BOND & STOCK COMPANY.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Texas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiff in error, Presidio County, Texas, and the sureties on the writ of error
46 bond herein, Chas. S. Murphy and J. Humphries, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

Dec. 15, 1906.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the three pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the Court (except the transcript of the record from the Circuit Court of the United States for the Northern District of Texas), in a certain cause in said Court, numbered 1560, wherein Presidio County is plaintiff in error, and The Noel-Young Bond & Stock Company is defendant in error, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 12th day of January, A. D. 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

47 In the United States Circuit Court of Appeals, Fifth Circuit.

No. 1560.

COUNTY OF PRESIDIO, Plaintiff in Error,
vs.
THE NOEL-YOUNG BOND & STOCK COMPANY, Defendant in Error.

It is stipulated and agreed by and between the attorneys in the above entitled case, that the certified copy of the transcript of record on file with the Clerk of the United States Supreme Court, may be taken as a return to the writ of certiorari issued in said cause by the Honorable Supreme Court of the United States on the 16th day of April, A. D. 1907.

T. J. BEALL,
Attorney for Plaintiff in Error.
MILLARD PATTERSON,
Attorney for Defendant in Error.

Endorsed as follows: No. 1560. County of Presidio, Plaintiff in Error, *vs.* The Noel-Young Bond & Stock Co., Defendant in Error. Stipulation of Parties. Filed 25 day of April 1907. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

A true copy.
Attest with seal April 25th, 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

48 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Presidio County is plaintiff in error, and The Noel-Young Bond & Stock Company is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Northern District of Texas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the
49 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of April, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

50 [Endorsed:] No. 1650. File No. 20,616. Supreme Court of the United States. No. 651, October Term, 1906. County of Presidio *vs.* The Noel-Young Bond & Stock Company. Writ of Certiorari. Filed 25 day of April, 1907. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

In the United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of Said Court do hereby certify that I received the within Writ on the 25th day of April A. D., 1907, and, whereas the attorneys for the parties therein named have, by a stipulation in writing this day filed in my office, agreed that the certified copy of the transcript of record on file with the Clerk of the United States Supreme Court, may be taken as a return to this Writ, therefore, in compliance with said Writ, and by direction of the Judges of this Court, I have made and attached hereto a certified copy of said stipulation as a return to the within Writ.

Witness my official signature and the seal of said Court at New Orleans, Louisiana, this the 25th day of April A. D., 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

51 [Endorsed:] File No. 20,616. Supreme Court U. S., October Term, 1907. Term No. 256. County of Presidio, Texas, Petitioner, *vs.* The Noel-Young Bond & Stock Co. Writ of certiorari and Return. Filed May 3rd, 1907.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1906.

Petition for writ of certiorari, requiring the Circuit Court of Appeals for the Fifth Circuit to certify to the Supreme Court for its review and determination the case of the

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COUNTY OF PRESIDIO, TEXAS,
Appellant,

versus

THE NOEL-YOUNG BOND & STOCK COMPANY,
Respondent.

To the Honorable the Supreme Court of the United States:

Petitioner, the County of Presidio, Texas, respectfully shows to this Honorable Court as follows:

FIRST: On the 26th day of July, 1904, respondent filed its original petition in the United States Circuit Court for the Western District of Texas, at El Paso, against the County of Presidio, Texas, to recover judgment on certain bonds, numbered 90, 91, 92, 94, 95 and 96, for $1,000.00 each, with certain coupons attached to each of said bonds for the sum of $80.00 each, all of said bonds and coupons, it being alleged, were issued by the County of Presidio, with the following recital on each of said bonds:

"This bond is issued by virtue of the Act of the Legislature of the State of Texas entitled. 'An Act to authorize the County Commissioners' Court of the several counties of the State to issue bonds for the erection of court house, and to levy a tax to pay for same;' approved February 11, 1881, and by virtue of the provision of Chapter 17, Laws of called session of the 18th Legislature, which said Chapter has since been validated by the Act of March 27, 1885, authorizing the County Commissioners' Court of

the several counties of the State to issue bonds for the erection of a county jail, and by order of the said County Commissioner's Court of said County of Presidio, on the 9th day of February, A. D. 1886, and is redeemable before maturity at the pleasure of the County."

Plaintiff alleged that all of said bonds matured and became due and payable on the 6th day of December, 1901, and there being no coupons on them representing the interest accruing after April 10, 1900, there is due upon the same interest at 8% per annum from April 10, 1900; plaintiff alleged that it was the owner of said bonds and the thirty coupons and interest thereon, and that payment had been duly demanded of all of said bonds and coupons of the Commissioners' Court of Presidio County, Texas, to whom same were presented for allowance, but that said Commissioners' Court had wholly refused to allow or pay the same, or to recognize said bonds and coupons in any way as just and valid claims against said County. Wherefore plaintiff prayed judgment against said County for the amount of the bonds and coupons sued on, and interest thereon.

SECOND: Appellant answered on the 5th day of October, 1904, and amended answer filed October 3, 1905, first by plea in bar of respondent's action, to the effect that on the 28th day of March, 1903, in a certain suit pending in the District Court of Presidio County, Texas, wherein Ball, Hutchings & Company were plaintiffs and Presidio County and others were defendants, in which the plaintiffs sued to recover judgment for the sum of $1,440.00, being interest due on certain coupons attached to bonds Nos. 90, 91, 92, 93, 94, 95, and 96, being the identical bonds sued on in this case. A trial was had on the merits, and a judgment was rendered on the 28th day of March, 1903, by the District Court of said County against the plaintiffs in said suit, and in favor of the defendants, in which the bonds were held to be null and void, and appellant alleges that the judgment rendered against plaintiffs in said suit of Ball, Hutchings & Company vs. Presidio County, in the District Court of Presidio County, Texas, was, on appeal, in all things affirmed by the Supreme Court of the State of Texas on the 4th day of March, A. D. 1905; that the aforementioned suit was upon interest coupons attached to bonds numbered 90 to 96, inclusive, and the

same identical bonds sued on in this case, as by the record and proceedings more fully appear.

THIRD: Appellant pleaded further: that if, for any reason, the plea in bar should not be sustained, plaintiff ought not to recover upon the bonds and coupons attached and sued upon, being numbered from 90 to 96, inclusive; because, the same were issued and delivered to the contractors, Britton & Long, not for the purpose of constructing a court house, which had already been built, but for the fraudulent and illegal purpose of furnishing the court house at Marfa, Texas. That the power of the County to erect a court house and jail at Marfa, and to issue bonds therefor, had been exhausted at the date of the issuance of the bonds and coupons sued upon, as appears from the order of the Commissioners' Court of Presidio County, of date February 9, 1886, recited on the face of said bonds and contract therein mentioned; that the purchasers of the bonds were put upon inquiry and affected with notice of the fraudulent and illegal purpose for which they were issued, that is to say; that on the 9th day of February, 1886, the Commissioners' Court of Presidio County, Texas, entered an order embodying the following:

1.

The bid of Britton to construct the court house at Marfa, Presidio County, for $60,000.00, to be paid in court house and jail bonds, and that of Anderson to construct a jail at the same place for $26,000.00, to be paid in the same kind of bonds, which were accepted;

2.

Britton & Anderson were required within ten days from February 9, 1886, the date of said order, to enter into contracts to construct same;

3.

Work to begin in twenty days from date of contract and the court house to be finished within one year, and the jail within six months from date of contract.

4.

The bonds were to be of the denomination of $1,000.00 each, to bear interest at 8%, to run fifteen years from their date,

and the $60,000.00 to be delivered to Britton were to bear the same date as his contract to build the court house, $30,000.00 of them to be delivered to him when the contract was signed, and $30,000.00 when the court house was half finished; and $26,000.00 to be delivered to Anderson to build a jail, and to bear the same date as his contract, and to be delivered to him when his contract was signed, $13,000.00, and $13,000.00 when the jail was half finished;

5.

And the county judge was authorized on behalf of the County, to enter into said contracts with Britton and Anderson, and to issue and to deliver to them, respectively, said bonds as above provided. That 60 of said bonds, numbered 1 to 60, inclusive, were dated February 11, 1886, and delivered to Britton, and 26 of said bonds, numbering from 61 to 86, inclusive, were dated February 15, 1886, and delivered to Anderson; said 86 bonds being for $1,000.00 each, were the bonds authorized to be issued by said order of February 9, 1886, of the Commissioners' Court of said Presidio County. That on the 6th day of February, 1886, the Commissioners' Court of Presidio County, for the purpose of paying for furnishing said court house, issued the bonds in controversy.

Appellant further pleaded the statute of limitations of four years to the coupons sued upon in this case.

FOURTH: The case was transferred to the Circuit Court of the United States for the Northern District of Texas, at Abilene, for trial, and on the 3rd day of October, A. D. 1905, the following proceedings were had: Plaintiff read as evidence the bonds and coupons sued upon in this case, numbered from 90 to 96, inclusive, and from an agreed statement of facts that the bonds had been presented to the County Commissioners' Court of Presidio County for payment and disallowed by said court before the filing of the suit; the defendant then read in evidence from the agreed statement of facts the petition in the case of Ball, Hutchings & Company vs. Presidio County, Texas, filed in Presidio County on August 15th, 1892, in which plaintiff sought to recover upon certain coupons which had matured and that were attached to the identical bonds sued on in this case, and the judgment of the district court holding said bonds void, and

the coupons attached thereto; also the record of the case on appeal from the judgment of the district court to the Court of Civil Appeals of the State of Texas (as reported in S. W. Rep. 27, p. 702) in which said court reversed the judgment of the district court of Presidio County, and rendered the same in favor of the plaintiff, Ball, Hutchings & Company; appellant also introduced the record of the judgment of the Supreme Court of the State of Texas in said cause, in which the judgment of the court of Civil Appeals was reversed by the Supreme Court and the judgment of the district court of Presidio County affirmed. (88 Tex. p. 60). This evidence was offered and read in support of defendant's pleas of former judgment in bar; also in support of his plea that the bonds and coupons sued upon were illegal and fraudulently issued.

FIFTH: The defendant offered in evidence the order of the Commissioners' Court of said County of Presidio, of date 9th day of February, 1886, under which the court house and jail bonds were issued, amounting to $86,000.00, and also the order of Commissioners' Court of the 8th day of November, 1886, authorizing the Commissioners' Court to contract with Britton and Long to complete water works system; also the order of the Commissioners' Court of the 4th day of December, 1886, accepting the bid of Britton and Long for the sum of $7,000.00, and authorizing payment for the furniture of the court house, with the protest of the County Judge to said action of the court; also a tabulated statement of the bonded indebtedness of Presidio County in the Bond Register showing, that the issuance of the bonds under the order of February 9th, 1886, for building the court house, and 26 bonds with coupons attached for building a jail under order of February 15, 1886, had exhausted the power of the Commissioners' Court to issue bonds for either of the aforesaid purposes, and that the bonds that were used for the payment of furnishing the court house were fraudulently and illegally issued, and created no liability on the County of Presidio.

SIXTH: At the close of the evidence counsel for plaintiff, Noel-Young Bond & Stock Company, admitted that the coupons sued upon were barred by the statute of limitations, and the trial court instructed the jury to return a verdict in favor of plaintiff against the defendant, Presidio County, for the amount of the principal of the bonds sued upon, with interest thereon at

the rate of 6% per annum from the 6th day of December, 1900, to which charge of the court the defendant excepted, wherein the jury were instructed to return a verdict in favor of the plaintiff on the following grounds:

1.

Because the judgment of the District Court of Presidio County rendered on the 28th day of March, 1883, which was affirmed on error by the Supreme Court of Texas, in which the bonds sued on in this case were held void, was, under the pleadings and evidence, a bar to plaintiff's action.

2.

Because, under the pleadings and undisputed evidence in this case, the said bonds and coupons attached were issued without lawful authority, as they were not supported by any proper order of the Commissioners' Court of Presidio County authorizing the issuance of the same.

3.

Because said bonds were issued and delivered to the contractors for the illegal purpose of furnishing the court house at Marfa, which had already been constructed, and were issued without any lawful authority, the power of the County to issue bonds to erect a court house and jail at Marfa having been exhausted, as appears from the order of the Commissioners' Court of Presidio County, of date February 9, 1886, and the contracts mentioned in the said order of the court and the registry of said bonds, all of which affect with notice the purchasers of the bonds in this suit, that the said bonds were issued without authority of law.

Thereupon, the defendant asked the court to give the following charge: "You are instructed that the Supreme Court of Texas, having held the bonds sued upon to be void, and it appearing from the evidence and admission of parties in court that the interest coupons sued on in this case are barred by the statute of limitations; you will return a verdict for the defendant," which said charge was refused by the court, to which the defendant excepted at the time, as shown by its bill of exception

in the record. And thereupon, under the peremptory instruction of the court, the jury rendered a verdict in favor of plaintiff and against the defendant for the sum of $6,000.00, with 8% interest thereon from December 6, 1900, and judgment of the court was rendered on said verdict, to which the defendant excepted, on the ground that under the issues joined and the evidence the jury should have been instructed by the court to find for the defendant. Thereafter, in due time, defendant filed his bill of exceptions, which was allowed by the court, and sued out a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit, as shown by certified copy of the transcript of the record, proceedings, and papers in this case duly authenticated.

That defendant made the following assignment of errors in said cause in connection with its petition for writ of error:

"1st: The court erred in its oral instruction to the jury as follows: 'In this case you will return a verdict in favor of the plaintiff for the amount of the bonds sued upon, amounting to the sum of $6,000.00, with interest at the rate of 8% per annum from the 6th day of December, 1900.'

"2nd: The court erred in refusing to charge the jury to find for the defendant, as requested.

"3rd: The court erred in refusing to give the following charge asked by the defendant: 'You are instructed that the Supreme Court of Texas, having held the bonds sued upon void, and it appearing from the evidence and admission of parties in court that the interest coupons sued upon in this case are barred by the statute of limitation, you will return a verdict for the defendant.'

"4th: The court erred in entering judgment in favor of the plaintiff and against the defendant."

SEVENTH: Thereafter, on the 15th day of December, A. D. 1906, a final judgment was rendered in the said cause as follows:

"Presidio County vs. The Noel-Young Bond & Stock Company, No. 1560.

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Texas, and was argued by counsel.

"On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be, and the same is hereby affirmed.

"It is further ordered and adjudged that the plaintiff in error, Presidio County, Texas, and the sureties on the writ of error bond herein, Charles S. Murphy and J. Humphries be condemned to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

"Dec. 15, 1906."

EIGHTH: The importance and gravity of the question arising from the decision of the United States Circuit Court of Appeals is shown in this: that it is in direct conflict with the decision of the Supreme Court of the State of Texas in the case of Ball, Hutchings & Company vs. Presidio County, wherein that court held as a matter of law, that the purchasers of said bonds and coupons were bound to know what appeared in the order of the Commissioners' Court recited on the face of said bonds; and that the County of Presidio had contracted to pay only $86,000.00 for the construction of the court house and jail, and that the bonds issued over and above that number were unauthorized and void.

NINTH: That the judgment of the District Court of Presidio County, rendered on the 28th day of March, 1893, in the case of Ball, Hutchings & Company vs. Presidio County, which was affirmed on error by the Supreme Court of the State of Texas was a bar to the plaintiff's action; because the coupons sued upon in said case were attached to said bonds at the time of said suit and are the identical bonds sued on in the instant case, the validity of which was put in issue directly by the pleadings and agreed statement of facts, and held to be void by the District Court, which said judgment was affirmed by the Supreme Court of the State of Texas on error, and the respondent in this case having acquired said bonds, subsequent to the institution of said suit, and being privy and successor to the rights of property of the owners of said bonds at the institution of the former suit and the judgment rendered therein, is conclusively bound by said judgment.

AUTHORITIES.

So. Pac. Co. vs. U. S., 168 U. S. 1.
Corcoran vs. Chesapeake, 94 U. S. 741.
Litchfield vs. Crane, 123 U. S. 549.
Town of Beloit vs. Morgan, 7 Wallace, 619.
Newton Mfg. Co. vs. Wilgus, 90 Fed. Rep. 485.

Board of Comm. of Wilkes Co. vs. Coler, 180 U. S. 506.
Sac. Co. vs. Cromwell, 4 Otto, 195. (S. C. 6 Otto, 681).
Am. & Eng. Enc. Law, Vol. 24, 746-748, and authorities cited.

TENTH: Privity exists between a vendor of property, real or personal, and his vendee, and a judgment in a suit in which the title to the property is in issue will be conclusive for or against any vendee of the parties to the suit who acquired title after institution of the suit.

AUTHORITIES.

Keokuk R. Co. vs. Missouri, 152 U. S. 301.
Ingersol vs. Jewet, 16 Blatchf (U. S. 378).
Hair vs. Wood, 58 Tex. 77.
Norton vs. House of Mercy, 101 Fed. Rep. 385.
Hauke vs. Cooper, 108 Fed. Rep. 922.
Satterlee vs. Bliss, 37 Cal. 489.
Am. & Eng. Enc. of Law, Vol. 24, 748.

ELEVENTH: The rights of the holders of county bonds are determinable by the law of the State, as it was declared by the State Court to be at the time the bonds were issued and put on the market.

AUTHORITIES.

Ball, Hutchings & Co. vs. Presidio Co. 88 Tex. 60.
Carruthers vs. The State, 67 Tex. 132.
Board of Comm. of Wilkes Co. vs. Coler, 180 U. S. Rep 506.

TWELFTH: At the time of the institution of the suit of Ball, Hutchings & Company vs. Presidio County, four of the bonds with the coupons attached, mentioned in this suit, being the same bonds involved in the present suit, as shown by the agreed statement of facts, belonged to Frank Ball, and three of the bonds and coupons attached belonged to J. C. League; that Frank Ball originally purchased the said bonds on the 10th day of December, 1886, from John T. Long, with all of their coupons attached, and sold three of said bonds to J. C. League, retaining four of the bonds, being numbered 90, 92, 94, and 96, and all of said bonds were sent to the attorneys for plaintiff, Ball, Hutchings & Company at El Paso.

THIRTEENTH: In the record of the proceedings of the Court of Civil Appeals, it appears that the court found in its conclusions of fact, that Ball, Hutchings & Company, plaintiffs in said suit, held the coupons attached to the seven bonds for collection as agent for Frank Ball and J. C. League, and that these bonds were issued on December 6th, 1886, and numbered from 90 to 96, inclusive. (27 S. W. Rep. 703). The Supreme Court of Texas, correctly held as follows:

"It is well settled in this state, (1) that a County cannot issue its bonds without an act of the legislature conferring the power to do so (Nolan County vs. The State, 83 Tex. 193); and (2) that where the power to issue the bonds of a county has been by the legislature conferred upon the Commissioners' Court, as in case of court house and jail bonds, such power cannot be exercised by said court except by an order of the court duly made and evidenced by the minutes of the court.

"Brown vs. Reese, 67 Tex. 318.

"Polly vs. Hopkins, 74 Tex. 145.

"The bond is not the obligation of the court, but of the County. The legislature has not seen fit to authorize the county judge and commissioners to impose such obligation upon the county, but has authorized the 'county commissioners' court' *under certain conditions* to issue bonds of the county to erect a court house and jail, and under the law such court can act only by an order * * *

"This brings us to the second inquiry, as to whether the ten bonds dated December 6, 1886, were authorized by the order of February 9, 1886, referred to on their face, and substantially stated above. Said order only authorized the issuance of eighty-six bonds of $1,000.00, and directed that they should be dated within ten days of February 9, 1886, which was in fact done by dating those numbering 1 to 60 on the 11th, and those numbered 61 to 86 on the 15th of February, 1886, and delivering them to the contractors. This fully satisfied the order, and said ten bonds subsequently issued were in fact without an order to support them, and therefore, in law, void.

"Ball, Hutchings & Co. claim, that though this be true, nevertheless they are entitled to recover, on the ground that they are bona fide holders of said bonds and coupons for value. They seek to have the courts declare an issue of bonds, void as between the county and the party to whom they were issued, valid as to

them on the ground aforesaid, and in order to do so, they must assume the burden of proving such issue. It may be conceded that they paid value for the bonds, but are they bona fide holders under the facts? 'To be a bona fide holder, one must be himself a purchaser for value without notice, or the successor of one who was. Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence.' McClure vs. Oxford, 94 U. S. Rep. 429.

"It results from what has been said above, that 'the law requires' a dealer in county bonds to know the provisions of the Act of the Legislature and the order of the County Commissioners Court under and by virtue of which such bonds were issued, whether referred to on the face of the bonds or not. What information did plaintiff derive from the Act of the Legislature, the order of February 9, 1886, and the bonds dated December 6, 1886, purchased by them?

"They were thereby informed, (1) that there was a difference of ten months between the order of court and the bonds purporting to have been issued thereunder, whereas the order required the total issue of bonds authorized thereby to be dated within ten days from February 9, 1886, $60,000.00 when the court house contract was signed, and $26,000.00 when the jail contract was signed, both contracts to be signed within the ten days; (2) that all of said bonds were, under said order, to have been issued and delivered before December, 1886, as the court house was to have been completed in one year and the jail in six months from date of contracts, and one-half of the court house and jail bonds were to have been delivered to the contractors on the signing of the contracts, and the other half when the respective buildings were one-half completed, thus requiring the delivery, in all probability, of all the bonds within seven or eight months from February 9, 1886; (3) that the county judge was authorized to sign and deliver the bonds sixty to Britton and twenty-six to Anderson; (4) that before delivery they must have been countersigned by the County Clerk and registered by the County Treasurer; (5) that the delivery of said bonds satisfied said order of February 9, 1886; (6) that by the numbering of the ten bonds of December 6, 1886, offered for sale, 87 to 96, it was

possible, if not probable, that more than eighty-six bonds were being issued under said order.

"These facts being known to them were sufficient to 'put them upon inquiry' as to whether these bonds were in excess of the amount authorized by said order. Being thus put upon inquiry as to such facts, it became their duty to use 'reasonable diligence,' to ascertain whether the bonds of December 6, 1886, offered them were in fact in excess of the amount authorized by such order.

"The burden being upon them as above stated to show that they were bona fide holders, in order to fix liability upon the county for these void bonds, it was incumbent upon them to prove on the trial that they had used such diligence, in order to have authorized the rendition of a judgment in their favor. Their failure to follow up the information in their possession is in law inconsistent with good faith and want of notice. Ball, Hutchings & Company having made no proof on this issue were not entitled to recover as bona fide holders.

"It is not necessary to the adjudication of the rights of the party to this suit to express an opinion on the other issues raised by the record, nor to decide whether plaintiff could have recovered in this suit without showing the existence of the conditions necessary to authorize the county commissioners court of this particular county to issue bonds to the amount shown by this record.

"Judgment of the court of civil appeals is reversed, and the judgment of the trial court is affirmed." (88 Tex. Rep. 60).

FOURTEENTH: That the validity of the identical bonds sued on in this case was involved in the former adjudication and upon the same facts agreed upon, as those upon which this case was tried. That in the former case decided by the Supreme Court of Texas, Ball, Hutchings & Company alleged and proved that they paid value for the bonds purchased by them, but in the case at bar the petition does not allege nor the evidence show, that The Noel-Young Bond & Stock Company paid any value for the bonds sued upon, and the record evidence shows that suit was filed long after the coupons were barred by the statute of limitation, and nearly four years after the maturity of the bonds.

FIFTEENTH: That the decision of the Supreme Court of Texas in the case under review was well considered, in which

the opinion of the court of appeals was overruled, and the judgment of the trial court affirmed by a unanimous court. We therefore respectfully submit that whether the judgment rendered is considered as a bar or as evidence, it should be conclusive of the matters therein litigated, and the decision of the Supreme Court of the State, construing its own constitution and statutes, as applied to the issuance of county bonds, should be sustained, and is, as a general rule, binding on the Federal Courts.

AUTHORITIES.

Claybourne Co. vs. Brooks, 111 U. S. 400.
Burges vs. Sealigman, 107 U. S. p. 20.
Forsyth vs. Hammond, 166 U. S. 506.

SIXTEENTH: That a certified copy of the entire record of the said case in the said Circuit Court of Appeals is herewith furnished, and hereto annexed as a part of this application, in conformity with rule 37 of this Honorable Court relative to cases from Circuit Court of Appeals, and the same is marked "Exhibit A."

SEVENTEENTH: Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in the said case is erroneous and that this Honorable Court should require the said case to be certified to it for its review and determination, under and in conformity with the provisions of the sixth section of the Act of Congress entitled An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdictions of the Court of the United States, and for other purposes, Approved March 3, 1891, the said case being made final in the said Circuit Court of Appeals by the said Act.

EIGHTEENTH: That it appears from the record that this case was tried from the agreed statement of facts in the case of Ball, Hutchings & Company vs. Presidio County, but your petitioner is not informed or advised as to the point or question involved upon which the judgment was rendered by the United States Circuit Court of Appeals for the Fifth Circuit, as no opinion in writing was filed in said cause.

NINETEENTH: *Wherefore*, your petitioner respectfully prays: that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States

Circuit Court of Appeals for the Fifth Circuit, commanding the said Court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case, therein entitled "The County of Presidio, Texas, Plaintiff in Error, vs. The Noel-Young Bond & Stock Company, Defendant in Error," numbered 1560 on the docket of said Court, to the end that the said case may be reviewed and determined by this court, as provided in Section 6 of the Act of Congress entitled "An Act to Establish Circuit Courts of Appeals, and to Define and Regulate, in Certain Cases, the Jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray, etc.

THE COUNTY OF PRESIDIO, TEXAS,

THOS. J. BEALL,

Attorney and Counsel for Appellant.

THE STATE OF TEXAS,

COUNTY OF EL PASO.

Thos. J. Beall, being duly sworn says: That he is one of the attorneys and of counsel for the County of Presidio, Texas, the petitioner above named, and as such had personal charge of the case in the foregoing petition mentioned in the Circuit Court of the United States for the Northern District of Texas, and in the United States Circuit Court of Appeals for the Fifth Circuit; that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

THOS. J. BEALL.

Sworn to and subscribed before me this 25th day of February, 1907. To certify which I hereto attach my name and official seal.

JOHN A. HAPPER,

Notary Public, El Paso County, Texas.

Seal

SUPREME COURT OF THE UNITED STATES

No. [redacted] 41.

COUNTY OF PRESIDIO, TEXAS,

Petitioner,

vs.

NOEL-YOUNG BOND & STOCK COMPANY,

Respondent.

In the Matter of the Petition of the County of Presidio, Texas, for Writ of Certiorari to the U. S. Circuit Court of Appeals, Fifth Circuit.

BRIEF FOR

Noel-Young Bond & Stock Company, opposing Application for Writ of Certiorari.

MILLARD PATTERSON,
Attorney for The Noel-Young Bond & Stock Co.

EL PASO PRINTING COMPANY, MANUFACTURING STATIONERS.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1906.

NO.....

COUNTY OF PRESIDIO, TEXAS,

Petitioner,

VERSUS

NOEL-YOUNG BOND & STOCK COMPANY,

Respondent.

In the matter of the Petition of the County of Presidio, Texas, for a Writ of Certiorari, to the U. S. Circuit Court of Appeals, Fifth Circuit.

BRIEF FOR

Noel-Young Bond & Stock Company, opposing Application for Writ of Certiorari.

To the Honorable Supreme Court of the United States:

Now comes the Noel-Young Bond & Stock Company, and opposing the petition for writ of certiorari in the above styled cause, suggests to this Honorable Court:

First: That this case does not and never has involved any question of particular importance or gravity, but involved a few simple questions of fact and under repeated rulings of the Supreme Court of the United States, during the past thirty years, the application only of well recognized principles of the law respecting negotiable instruments.

STATEMENT.

The Noel-Young Bond & Stock Company recovered judgment in the U. S. Circuit Court, N. D. T. at Abilene, on October 3, 1905, for the amount due (not on any coupons) on Presidio County Court House and Jail Bonds, Nos. 90, 91, 92,

94, 95 and 96. All these bonds were of date December 6, 1886, and matured in December, 1901, being payable fifteen years after date, and all of them had the printed endorsement upon the same "Bond No..... $1,000.00, Presidio County Courthouse and Jail Bond." They were all payable to bearer, and all contained the following recital: "This bond is issued by virtue of an act of the Legislature of the State of Texas entitled 'an act to authorize the County Commissioners' Court of the several counties of the state to issue bonds for the erection of a court house, and to levy a tax to pay for the same,' approved February 11, 1881, and by virtue of the provisions of Chapter 17, laws of call session of the 18th Legislature, which said chapter has since been validated by the act of March 27, 1885, authorizing the County Commissioners' Court of the several counties of the state to issue bonds for the erection of a county jail, and by order of the Commissioners' Court of said County of Presidio, on the 9th day of February, 1886, and is redeemable before maturity at the pleasure of the county."

Outside of the plea of *res adjudicata*, the only pleading of the defendant, Presidio County, in the trial court, was that the bonds were issued (1) for an unlawful purpose, (2) and not that plaintiff knew that fact when it acquired the bonds, but that it and all other purchasers were put upon inquiry and chargeable with such knowledge, on account of the fact that the bonds were, as alleged, issued without any authority or order of the Commissioners' Court.

The assignments of error of Presidio County, upon which the case was heard in the U. S. Circuit Court of Appeals, 5th Circuit, were very general, and were as follows, to-wit:

(1). The Court erred in its oral instructions to the jury as follows: "In this case you will return a verdict in favor of the plaintiff for the amount of the bonds sued upon, amounting to the sum of $6,000.00, with interest at the rate of 8% per annum, from the 6th day of December, 1900."

(2). The court erred in refusing to charge the jury to find for the defendant as requested.

(3). The court erred in refusing to give the following charge asked by the defendant: "You are instructed that the

Supreme Court of Texas, having held the bonds sued upon void; and it appearing from the evidence and admission of parties in court that the interest coupons sued upon in this case are barred by the statute of limitation, you will return a verdict for the defendant."

(4). The court erred in entering judgment in favor of the plaintiff and against the defendant.

Under these assignments of error, the County of Presidio, Plaintiff in Error, in the U. S. Circuit Court of Appeals urged the following propositions:

(1). That the judgment of the district court of Presidio County rendered in March, 1893, in the case of Ball, Hutchings & Co. vs. Presidio County, said case involving only certain coupons which were sued upon prior to 1893, was, under the pleadings and the evidence in this case, a bar to the plaintiff's action.

(2). That under the pleadings and evidence in the case the bonds sued on were issued without lawful authority, not being supported or authorized by any order of the Commissioners Court of Presidio County.

(3). That the bonds sued upon were issued and delivered to Britton & Long, Contractors, for the illegal purpose of furnishing the court house at Marfa.

(4). That the order of the Commissioners' Court on December 4th, 1886, did not authorize the issuance of the bonds, and that there was no authority under the constitution and law of Texas to issue bonds for the purpose of furnishing court houses.

The points upon which the case was decided by the U. S. Circuit Court of Appeals, 5th Circuit, were determined upon the following counter-propositions urged by the Noel-Young Bond & Stock Co., Defendant in Error:

(1). The judgment of the district court of Presidio County, rendered on the 28th day of March, 1893, in the case of Ball, Hutchings & Co. vs. Presidio County (which was affirmed on error by the Supreme Court of the State of Texas) was not, under the pleadings and evidence in this case, a bar to the plaintiff's action. The judgment of the Supreme Court of Texas being simply upon certain coupons (aggregating $1,440.00)

which had matured at the time the suit of Ball, Hutchings & Co. vs. Presidio County was brought in the district court of Presidio County in March, 1893, could not be recognized as binding the Noel-Young Bond & Stock Co. in this suit, as this suit was brought, not upon any of the same coupons, but brought upon the six bonds themselves more than ten years afterward, and plaintiff in this suit was not a party to that case, and the subject matter of this suit was different from the subject matter in the case of Ball, Hutchings & Co. vs. Presidio County.

(2). The undisputed evidence in this case shows that one Frank Ball and J. C. League were innocent holders of the six bonds sued upon in this case in 1892, having bought the same in open market for value without any notice whatever of any irregularity in their issuance, and there is no pleading that they were in any way bound by the judgment in the case of Ball, Hutchings & Co. and no facts were alleged showing that they were bound by it, or how they were bound by it.

(3). The cause of action in the suit of Ball, Hutchings & Co. being certain coupons which matured prior to 1893, and this suit being upon the bonds which matured in 1901, the causes of action are different. In the case of Ball, Hutchings & Co. it was simply determined that in so far as the coupons sued upon were concerned, they were not the paper of the county, as the order of the Commissioners' Court of February 9th, 1886, did not support them—and even if the present suit had been between the same parties, the first judgment would not have precluded the proof which was made in this case that the *bonds* were issued by virtue of an order of and by authority of the Commissioners' Court of Presidio County on December 4th, 1886.

(4). The undisputed evidence in this case shows that the Commissioners' Court of Presidio County did have lawful authority to issue the bonds sued upon, and shows that the bonds were supported and authorized both by an order of the Commissioners' Court of Presidio County passed in February, 1886, and an order of said Court made in December, 1886.

(5). As the bonds recite upon their face that they were issued in accordance with and by virtue of the statutes of Texas,

which are mentioned in the same, and purport upon their face to have been issued by virtue of the statutes mentioned in the same, for the purpose of erecting a court house and jail, any purchaser of the bonds in the open market had a right to rely upon and would be protected by the recitals in said bonds; and there being no evidence whatever that the bonds were issued without lawful authority, or that the Commissioners' Court of Presidio County did not have the *power* to issue bonds of such a nature, any purchaser of such bonds in the open market would be protected and would not be chargeable with knowledge of the fact that the bonds were issued for a purpose other than that mentioned in the bonds.

(6). The following recital, which appears in each of the bonds sued upon, to-wit: "This bond is issued by virtue of an Act of the Legislature of the State of Texas, entitled 'An Act to authorize the County Commissioners' Court of the several counties of the state to issue bonds for the erection of a court house and to levy a tax to pay for same,' approved February 11, 1881, and by virtue of the provisions of Chapter 17, Laws of Called Session of the 18th Legislature, which said chapter has since been validated by the Act of March 27, 1885, authorizing the County Commissioners' Court of the several counties of the state to issue bonds for the erection of a county jail and by order of the County Commissioners' Court of Presidio County on the 9th day of February, 1886," is the recital of a fact and not a conclusion of law, and such recital would bind the County of Presidio in favor of any purchaser of the bonds in the open market for value.

REMARKS.

The plea of the defendant, Presidio County, in the trial court, in so far as the matter of the former judgment in the case of Ball, Hutchings & Co. vs. Presidio County was concerned, if analyzed, amounts to nothing more than the proposition that as the Supreme Court of Texas had held that the coupons upon which suit was brought by Ball, Hutchings & Co. against Presidio County, were void, this judgment of the Supreme Court of Texas as to the invalidity of the coupons, affected and

bound every person whomsoever that might then have owned any of the bonds.

On the question of the plea of *res adjudicata* we cited among other cases Russell vs. Place, 94 U. S. p. 606, where an attempt was made to plead a judgment in bar, and the Supreme Court says: "According to Coke, an estoppel must be certain to every intent, and if, upon the face of the record, anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when plead, and nothing conclusive in it when offered in evidence:" citing Aiken vs. Peck, 22 Vt. 260, and Hooker vs. Hubbard, 102 Mass. 254.

Also City of Aurora vs. West, 74 U. S. pp. 82-107, where Supreme Court says: "When the record of a former judgment is set up as establishing some collateral fact involved in a subsequent controversy, it must be plead strictly as an estoppel, and the rule is that such a pleading must be framed with great certainty, as it cannot be aided by any intendment."

Where a former judgment is plead in bar, it cannot be so availed of unless the parties appear to be the same, or are averred to have been privies in interest or estate. Greely vs. Smith, Federal Cases No. 5749; same case, Federal Cases No. 5750.

A defense that, in an action by one K. against plaintiffs they set up the same matter and cause of action, and that K. had verdict and judgment, is bad, as not showing privity between K. and the defendants. Goddard vs. Benson, 15 Abbott's Practice 191.

Upon the proposition that even if this suit had been between the same parties, "the judgment on the coupons in the state court would not have precluded the proof which was made in this case that the bonds were issued by virtue of an order of and by authority of the Commissioners' Court of Presidio County, on December 4th, 1886;" we cited Nesbitt vs. Independent District of Riverside, 144 U. S. pp. 610-621, ——— Cromwell vs. Sac County, 94 U. S. p. 351, and Keokuk & W. R. Co. vs. State of Missouri, 152 U. S. pp. 307-310.

The plea of former adjudication filed in the trial court does not allege anything about the ownership of the bonds Nos. 90, 91, 92, 94, 95 and 96, and does not allege who were the

owners of the bonds at the time the judgment was obtained in 1893 in case of Ball, Hutchings & Co. vs. Presidio County on certain coupons, and does not allege or intimate in any way that the owners of the bonds at that time were connected in any way whatever with, the suit of Ball, Hutchings & Co. vs. Presidio County, and does not allege that the owners of the bonds were at that time in any way whatever affected by the judgment in the case of Ball, Hutchings & Co. vs. Presidio County.

The eighth sub-division of the petition for a writ of certiorari in this case suggests that the decision of the U. S. Circuit Court of Appeals is in direct conflict with the decision of the Supreme Court of Texas in the case of Ball, Hutchings & Co. vs. Presidio County, wherein the Supreme Court of Texas held as a matter of law that the purchasers of the bonds and coupons *were bound to know what appeared in the order of the Commissioners' Court of Presidio County.* In Stanley County Commissioners vs. W. N. Coler & Co. 190 U. S. pp. 442-444, the United States Supreme Court said that such a question was one of commercial law and general jurisprudence, and the right to exercise its own judgment was asserted. We quote the following language from the opinion in the case last mentioned: "It is the right and duty of the Federal Courts to exercise their own judgment, as they also do in reference to the doctrines of commercial law and general jurisprudence. . . . . The bonds were expected to be offered in the financial markets of the other states of the Union, even offered in the financial markets of the world. They were payable to bearer. They were expected to have, and their value to an extent depended upon their having, almost the currency and sanction of money—the affairs of a county can only be administered by its officers, and to their attention and duty its interests must be intrusted. When the power to issue bonds, therefore, depends upon the existence of local conditions, the local officers are charged with the duty and the responsibility of ascertaining them, and the presumption that the duty was exercised should and does accompany and guarantee the bonds in every financial market."

The great fallacy which underlies every proposition asserted by the petitioner is, that an improper exercise of power is the same as a total want of power. In this case there is no question

of power raised. The Acts of the Legislature of Texas gave the power to the Commissioners' Court to issue such bonds very explicitly, and there is not even an intimation in the record that these bonds sued upon were issued in excess of the amount that could have been issued by the Commissioners' Court under the law. The presumption of the law is that The Noel-Young Bond & Stock Co. acquired the bonds before maturity for value without notice, and there is no pleading upon the part of defendant that they did have notice, but the pleading is that they were chargeable with notice (on account of the recitals in the bonds) of the contents of the order of February 9th, 1886, (and were bound to know that the 86 bonds provided for in the order of February 9th, 1886, had already been issued before the six bonds sued upon in this case were issued, and that the order had been exhausted, and that there was no order to support the issuance of these bonds.) The undisputed evidence showed affirmatively that Frank Ball and J. C. League were purchasers of the bonds as far back as December, 1886, for value without notice, and any person whomsoever purchasing the bonds afterward would be protected and would have all the rights of a purchaser for value without notice. And the undisputed evidence showed that the Commissioners' Court of Presidio County authorized the issuance of the very bonds sued upon Dec. 4th, 1886. (Pr. Trans. p. 31).

In Waite vs. Santa Cruz, 184 U. S. pp. 302-329, it was contended on behalf of the City of Santa Cruz, that the purchaser of certain bonds and coupons was bound to know the contents of the order or ordinances under which the bonds were issued, and that being chargeable with knowledge of the contents of the order or ordinances under which the bonds were issued, they having been issued for an unlawful purpose, he could not claim that the bonds were the valid obligations of the city. The Supreme Court held that as such bonds contained recitals to the effect that they were issued by virtue of the Charter of the City empowering it to borrow money, etc.; the City could not be heard to say to the contrary. The Court says, quoting from the case of Marshall County vs. Schenk, 5 Wallace, p. 772: 'It would be the grossest injustice, and in conflict with all the past utterances of this court, to permit the City, having power under

some circumstances to issue negotiable securities, to escape liability upon the ground of the falsity of its own representations made through official agents and under its corporate seal, as to the purpose for which these bonds were issued. Whether such representations were made inadvertently or with the intention, by the use of inaccurate titles of ordinances, to avert inquiry as to the real object in issuing the bonds, and thereby facilitate their negotiation in the money markets of the country, in either case the City, both upon principle and authority, is cut off from any such defenses." The Court then cites the case of Evansville vs. Dennet, 161 U. S. pp. 434-443, which holds that a purchaser of bonds such as the bonds involved in the case at bar, containing such recitals as the bonds in the case at bar, was protected by such recitals, and that he was not bound to examine the records or ordinances or to know from the contents of the records or ordinances under which the bonds were issued, that they were issued for an improper purpose.

In this case of Evansville vs. Dennet, 161 U. S. pp. 434-446, the Court says, referring to municipal bonds such as those involved in the case at bar, recitals by the municipal officers "that bonds have been issued 'in pursuance of,' or 'in conformity with,' or 'by virtue of,' or 'by authority of' the statute, have been held in favor of bona fide purchasers for value to purport full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued." The Court proceeds to say that on account of such recitals, purchasers for value having no notice, etc., were not bound to go behind the statute conferring the power, etc.; with such recitals before them they had the right to assume that the circumstances existed which authorized the City to exercise the authority given by the Legislature.

In Stanley County Commissioners vs. W. N. Coler & Co., 190 U. S. pp. 442-444, the court again declares that recitals in such bonds to the effect that the bonds have been issued "in pursuance of," or "in conformity with," or "by virtue of," or "by authority of" the statute, imported full compliance with the statute in favor of bona fide purchasers for value, and precluded inquiry as to whether the precedent conditions had been performed before the bonds were issued.

In Orleans vs. Platt, 99 U. S. 676, the Supreme Court says: "The bonds in question have all the properties of commercial paper and in the view of the law they belong to that category—this Court has uniformly held, when the question has been presented, that where a corporation has lawful power to issue such securities and does so, the bona fide holder has the right to presume the power was properly exercised, and is not bound to look beyond the question of its existence. Where the bonds on their face recite the circumstances which bring them within the power of the corporation, it is estopped to deny the truth of the recital," citing many cases.

We respectfully submit that petition for the writ of certiorari should be denied.

MILLARD PATTERSON,
Attorney for The Noel-Young Bond & Stock Co.